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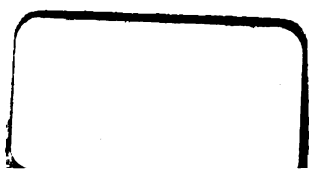
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THE  
QUEBEC LAW DIGEST

VOL. III.

BEING

A COMPLETE COMPILATION

OF ALL THE

REPORTED DECISIONS IN THE PROVINCE OF QUEBEC,

From the First January, 1881, to the First January, 1885,

TOGETHER WITH A LARGE NUMBER OF IMPORTANT DECISIONS NOT  
OTHERWISE REPORTED.

THE WHOLE

ANALYTICALLY DIGESTED AND ARRANGED,

WITH

CONSTANT REFERENCES TO THE CODE AND STATUTES

IN RELATION THERETO

BY

CHARLES HENRY STEPHENS, B.C.L.,

ADVOCATE.

---

MONTREAL:

A. PERIARD, LAW PUBLISHER.

1886.

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## P R E F A C E.

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This volume of the Digest will be the last of the present series. To add to the number now issued would defeat in a great measure the object of a Digest, by destroying that facility of reference which it aims to secure. Moreover the first volume is out of print, and should it fall to my lot to undertake the work again, it will be to consolidate in one the entire jurisprudence of the province. The present volume brings the reports down to the commencement of the new series carried on by Mr. Kirby and his colleagues, under the name of the *Montreal Law Reports*, and which, to my thinking, marks an important advance in the business of Law reporting in the Province. And when we take into account the valuable work supplied by *La Revue Legale*, as recently improved, and by the *Quebec Law Reports* which appear to be edited with considerable care and credit, I think the profession here is to be congratulated on what is being done in the matter of reported jurisprudence.

In this volume also, I have given a pretty thorough Digest of the public Statutes affecting this part of the country, during the years to which it refers, than which I can imagine nothing more useful to the practitioner, and which, I entertain no doubt, will be correspondingly appreciated.

C. H. S.

MONTREAL, *May*, 31st, 1886.



## LIST OF ABBREVIATIONS.

<b>C. C.</b> .....(Following reference to Reports Circuit Court.	<b>M. L. R. S. C.</b> Montreal Law Reports Superior Court.
<b>C. C.</b> .....(Following a number thus: 999 C. C.) Civil Code.	<b>M. L. R. Q. B.</b> Montreal Law Reports Queen's Bench.
<b>C. C. P.</b> .....Code of Civil Procedure.	<b>P. C.</b> .... Privy Council.
<b>C. S. C.</b> .....Consolidated Statutes of Canada.	<b>Po. Ct.</b> .....Police Court.
<b>C. S. L. C.</b> .....Consolidated Statutes of Lower Canada.	<b>Q. B.</b> .....Queen's Bench.
<b>C. Vic., etc.</b> ...Dominion Statutes.	<b>Q. B. R.</b> .....Queen's Bench Reports.
<b>Ins. Act.</b> .....Insolvent Act.	<b>Q. L. R.</b> .....Quebec Law Reports.
<b>L. J.</b> .....English Law Reports.	<b>Q. S.</b> .....Quarter Sessions.
<b>L. C. J.</b> .....Lower Canada Jurist.	<b>Q. Vic , &amp;c .</b> Quebec Statutes.
<b>L. N.</b> ..... Legal News.	<b>Rec. Ct.</b> .....Recorder's Court.
<b>Mag. Ct.</b> .....Magistrates' Court.	<b>R. L.</b> .....Revue Légale.
<b>M. C.</b> .....Municipal Code.	<b>S. C.</b> .....Superior Court.
<b>M. P. C. R.</b> .....Moore's Privy Council Reports.	<b>S. C. R.</b> .....Superior Court in Review.
	<b>S. C. Rep</b> .... Supreme Court Reports.
	<b>Su. Ct.</b> ..... Supreme Court.
	<b>V. A. C</b> ..... Vice-Admiralty Court.

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# A COMPLETE ANALYTICAL DIGEST

OF ALL THE  
REPORTED DECISIONS IN THE PROVINCE OF QUEBEC.

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## ABANDONMENT.

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II. OF PROPERTY, *see* HYPOTHEC DELAISSEMENT.

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## ABATEMENT.

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## ABATTOIRS.

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## ABSENTEES.

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II. SERVICE OF, *see* DISTRIBUTION. CONTESTATION OF REPORT OF.

## ACCEPTANCE.

I. OF DELEGATION OF PAYMENT.

II. OF GOODS SOLD MAY BE PROVED BY PAROLE.

III. OF SUCCESSION.

## DELEGATION OF

1. Action for \$3792.75 on the alleged acceptance by Plaintiff of a delegation of payment in a deed of sale from L to R of date 26th May, 1875, whereby R, undertook to pay opposants in discharge of L, a hypothecary debt charged upon the property by L in favor of opposants. The action alleged that the delegation became perfect by the due realization of the deed of the 26th May, 1875 and that on the 26th March, 1877, the Appellants had, by notarial act, duly signified their acceptance of the delegation of payment and the Respondent had in consequence become their personal debtor. R, pleaded that he had never become the personal debtor of the Appellants, that the deed of the 26th May, 1875, had been taken by him to secure an indebtedness of L, to him and was subject to a condition *réméré* until the 1st of January 1876. That L, remained in possession until the 23rd August 1876, when R reconveyed the property to L who remained in possession until the 30th January, 1877, when the appellant became the

adjudicataire thereof at the Sheriff's sale for \$50,00, that the acceptance of the delegation after the sale on the 17th March, 1877, signified the 26th March of the same year, could not render the respondent personally liable, the indication of payment in the deed of the 26th May, 1875, having been expressly revoked by the retrocession of the 23rd August, 1876. The Appellants replied that the pretended retrocession could not liberate the respondent nor destroy the operation of the registration of his deed, moreover that he had paid sums on account, acknowledged himself the personal debtor, frequently offered and promised to pay, had asked for time and negotiated for a settlement. The receipts on account however were not conclusive of the object of the payment. Held that as the formal acceptance was posterior to the retrocession that there was no sufficient acceptance to bind R. *Société Per. de con. Jacques-Cartier & Robinson*, 1 Q. B. R. 32, & 4 L. N. 38, Q. B., 1880.

2. An acceptance of a delegation in a deed of sale whereby a sum of money is made payable to the party accepting, on condition of such party granting a discharge of the character specified in the deed, compels the party so accepting to execute the discharge in question before suing to recover the money. *Le Crédit Foncier du Bas Canada & Thornton* 25, L. C. J., 243. S. C. R., 1880.

3. Where a part of the price of a lot of land sold by a father and son conjointly had been delegated to the other children of the elder vendor some of whom were minors, and some years subsequently the purchaser resold it to the father—*Held*, in a contestation of the collocation of the part of the price so delegated that an acceptance of the delegation need not be express, but may be shown by acts and conduct, and as in the case in question, the vendor was himself the tutor of the minor, to whom was the delegation that there was a sufficient acceptance. *Dostaler & Dupont* 8, Q. L. R., 365, S. C. R., 1882.

4. In November, 1874, a brother of plaintiff sold to defendant an immoveable for the sum of \$1000, one half payable in cash and the other half to plaintiff in discharge of the vendor, by instalments. Another brother of plaintiff intervened in the deed and accepted for him. Plea that the defendant had paid to the vendor the balance due previous to action brought and had taken his discharge; that the vendor was not indebted at the time to the plaintiff, that the plaintiff had not accepted the delegation previous to the payment, and that the delegation was made only in the interests of the vendor. All these allegations were established by the proof and the plaintiff, on *faits et articles*, admitted that the vendor owed him nothing and that it was just a matter of accommodation between them, entered into for the convenience of the vendor and to put it out of his power to spend it. It also appeared that the brother who had accepted had no special power to do so, and

was simply employed to act for him in ordinary affairs. Held under these circumstances that the payment to the vendor was good payment and the action was dismissed.—*Lajoie & Desaulniers*, 7, Q. L. R., 272, S. C. R., 1881, 2, Q. B. R., 241, Q. B., 1882.

5. A creditor received certain railway bonds as collateral security for notes of his debtor. In a suit to recover the bonds brought by the curator to the debtor's vacant succession, the creditor pleaded that the debtor had agreed to transfer the bonds to one G, for a price named and that G had assigned his rights to defendant. Held, that as there was no evidence that the obligation was accepted by G, prior to the insolvency or death of the debtor, it could not be urged as a defence to the action. (1) *Pauzé & Senecal* 7, L. N., 30, S. C. 1884.

#### II. OF GOODS SOLD MAY BE PROVED BY PAROLE.

6. Action in assumpsit for the price of a barrel of wine amounting to \$100. Plea *non debitatus*. Proof was that defendant had acknowledged to a third party that he had purchased the wine and offered to sell him half of it. Held to be good evidence of acceptance and that acceptance can be proved by parole *Lemonier & Charlebois* 5. L. N. 196. S. C. 1882.

7. The declaration set up a sale by appellants to respondents of 500 to 800 barrels of refined pale seal oil, to arrive, at 57½ cents per gal. cash, less 3 per cent, with the provision that the appellant, should have the right to ship 100 to 200 barrels additional to suit the vessel, the respondents to have the option of taking the same. The delivery of the oil was not to be made until the 1st August. That in accordance with the contract appellants shipped 778 casks of oil, which arrived in Montreal 1st July, 1880, that notice was given to the respondents of its arrival, and that L. and M. agents of appellants were instructed by respondents, through their agent to store the same as it was not then required; that shortly after arrival and storage of the oil, respondents by their manager offered appellants agents to sell the oil at 60 cents per gal., that five barrels were sold at this rate, that respondents then advanced the price, that they finally refused to take the oil altogether and upon such refusal the oil was sold at the current market price and a loss of \$3,094.71 made, for which action was brought. All these transactions were verbal, and no writing could be produced as a commencement of proof. Plaintiff by various questions tried to introduce parole evidence but the questions were all over-ruled. On appeal from the interlocutory at enquete the points urged were that it was necessary under Art. 1233. C. C. to prove the memorandum in the first place, and secondly that proof of an acceptance, without a delivery sufficed to take the case out of the rule of the article and that such acceptance could be proved by parole.

(1) In appeal.

Held in the Supreme Ct. overruling all the decisions in the Courts below, that the acceptance under the circumstances described can be proved by parole. *Munn & Berger* 6. L. N. 363 & 27. L. C. J. 349. Q. B. & 10, S. C. Rep. 512, Su. Ct., 1885.

#### III. OF SUCCESSION.

8. The father of the defendants died intestate leaving little or no property of his own but indebted to plaintiff in the sum of \$2,079.00. The property which he had held during his lifetime and which was of considerable value was substituted to his children of whom seven and his widow, the defendants, survived him. The plaintiff, fifteen days after the decease of his debtor and before the delay allowed by the Code (1) to the heirs to accept or renounce had expired, proposed that they should sell him a right of redemption (*droit de r  m  re*) which they had in a property once belonging to their father and offered \$100 for it. This was accepted, the transfer was made before notary and the money paid and divided between them. This was on the 2nd April, 1872. On the twenty-third May 1877, the defendants by *acte* before notary renounced the succession of their father and subsequently, being sued for the \$2,079, pleaded the renunciation and that the transaction of the 2nd April, 1872, was the result of fraud and artifice on the part of the plaintiff. Evidence was adduced and showed that the notary who usually acted for the plaintiff had refused to receive the deed of the 2nd April, unless it was explained to the heirs that their entering into the transaction would have the effect of making the liable for all of their late father's debts, and that the deed was finally passed before another notary; that plaintiff knew that the estate of the deceased was insolvent and inferentially that plaintiff devised the transaction with regard to the *droit de r  m  re* for the purpose of holding the heirs subsequently for the debts of the estate. Held that these facts amounted to *dol* on the part of plaintiff, and defendants were entitled to be relieved of their acceptance of their fathers' estate implied thereby. *Ayotte & Boucher*, 8, Q. L. R., 327, Q. B., 1882, & 9, S. C. Rep. 460, Su. Ct. 1883.

#### ACCEPTANCES.

I. LIABILITY OF ACCEPTOR, *see* BILLS OF EXCHANGE.

#### ACCESS.

I. RIGHT OF, *see* RIVERS, SERVITUDES.

(1) The heir is allowed three months to make the Inventory, counting from the time when the succession devolved. He has moreover, in order to deliberate upon his acceptance or renunciation a delay of forty days, which begins to run from the day of the expiration of the three months for the Inventory or from the day of the closing of the Inventory, if it be completed, within the three months. 664, C. C.

## ACCESSION.

I. IN MATTERS OF SUCCESSION *see* SUCCESSION.

II. RIGHT OF *see* OWNERSHIP.

## ACCIDENTS.

I. LIABILITY FOR, WHEN CAUSED BY NEGLIGENCE, *see* DAMAGES.

II. LIABILITY OF MASTER FOR, *see* MASTER AND SERVANT.

III. LIABILITY OF MUNICIPAL CORPORATIONS FOR, *see* MUNICIPAL CORPORATIONS.

IV. LIABILITY OF PARENTS FOR, *see* PARENTS.

ACCOMMODATION PAPER—*See*  
BILLS OF EXCHANGE, ETC.

## ACCOUNT.

I. ACTION TO, *see* ACTION EN REDDITION.

II. LIABILITY OF EXECUTORS TO, *see* EXECUTORS.

III. LIABILITY OF PARTNERS TO, *see* PARTNERSHIP.

IV. OF TUTORSHIP.

-9. Where a tutor was condemned to give up possession of a certain immoveable property and to render an account of the rents and revenues thereof. Held that such account should be rendered under oath and the person who renders it, should take therein the same quality that he or she has in the action. *Pilon & Brunette*, 11 R. L. 149, S. C. 1880.

## ACCOUNTS.

BETWEEN PARTNERS, *see* PARTNERSHIP.

ACCOUNTANTS, *see* EXPERTS.

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## ACQUIESCENCE.

I. DOES NOT GIVE VALIDITY.

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I. DOES NOT GIVE VALIDITY.

10. Where taxes are illegal in consequence of there being no valid assessment roll in existence, acquiescence will not give validity to such assessment. *Corporation de Chambly & Scheffer*. 7 L. N. 390, and M. L. R. 1 Q. B. 42 1884.

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## ACTION

I. AGAINST.

*Heirs.*

II. BY.

*Coproprietor.*

*Usufructuary.*

III. CONTINUED FOR COSTS *see* COSTS.

IV. CUMULATION OF.

V. DISCONTINUANCE OF, *see* PROCEDURE.

VI. EN BOBNAGE.

VII. EN COMPLAINT.

VIII. EN DÉCLARATION D'HYPOTHÈQUE.

IX. EN DÉCLARATION DE PATERNITÉ.

X. EN DESTITUTION, *see* EXECUTORS.

XI. EN PARTAGE.

XII. EN REDDITION DE COMPTE.

XIII. EN RÉMÉRÉ.

XIV. EN REINTEGRADE.

XV. EN REPETITION.

XVI. EN SÉPARATION DE BIENS.

XVII. EN SÉPARATION DE CORPS.

XVIII. FOR SALARY, *see* MASTER AND SERVANT.

XIX. FOR PENALTY UNDER QUEBEC ELECTIONS ACT, *see* ELECTION LAW.

XX. HYPOTHECARY.

XXI. INCOMPATIBLE GROUNDS OF, *see* CUMULATION OF.

XXII. IN EJECTMENT.

XXIII. INTEREST IN, *see* INSOLVENCY.

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XXV. NOTICE OF, *see* PROCEDURE.

XXVI. ON DETAILED ACCOUNT.

XXVII. ON TRANSFER.

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XXIX. POPULAIRE.

XXX. POSSESSORY.

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XXXII. QUANTO MINORIS, *see* SALE.

XXXIII. QUI TAM.

XXXIV. REDHIBITORY.

XXXV. REVOCATORY, *see* CONTRACTS.

XXXVI. RESOLUTARY *see* SALE.

XXXVII. RIGHT OF.

*Where arises.*

XXXVIII. SERVICE OF, *see* PROCEDURE.

XXXIX. SUSPENSION OF.

XL. TO ACCOUNT, *see* EN REDDITION.

XLI. TO ANNUL BY LAWS, *see* MUNICIPAL CORPORATIONS.

XLII. TO RECOVER LEGACY.

XLIII. TO SET ASIDE SHERIFF'S SALE, *see* SALE JUDICIAL.

XLIV. UNDER LESSOR AND LESSEE ACT, *see* LESSORS AND LESSEES.

XLV. UNION OF.

#### I. AGAINST.

11. *Heirs.*—In order to maintain an action against heirs, it is not necessary to allege they are so in virtue of a will, or in what manner they are so, nor in what manner they have accepted the succession but simply that they have done so or in other words it is sufficient in such action to allege a right of action against the defendants, without setting up all the means by which that right of action arises. *Benoit & Foster*, 28 L. C. J., 267 S. C. 1872.

#### II. BY.

12. *Coproprietors.*—The plaintiff, was transferee of a co-heir to an immovable property of which the heirs had the simple property, before the death of him, from whom they derived, and who reserved the use of it to himself. After his death, the transferee took action, against the lessees of the property, for his share of the rents and revenues thereof. Defendant contested the action on several grounds, the principal of which were, that the plaintiff had no right to proceed alone without a partition and without the others heirs having been called in. Held that on the death of the usufructuary the rent belonged to the co-proprietors according to their several shares, and they could sue for the same, or each for his share without waiting for a partition of the property and without the necessity of joining the others in the action. *Labelle & Villeneuve*, 28 L. C. J., 254, C. C. 1872.

13. But held at the same time, that until the lessees, had received formal notice of the death of the usufructuary, and of the rights of his representatives, they were justified in paying to the Attorney of the deceased notwithstanding personal knowledge on their part of his death. *Id.*

14. *Usufructuary.*—In an action by a usufructuary, legatee of her late husband deceased, to recover a claim due his estate Held that a usufructuary who does not even allege either that she is in possession of her

usufruct, or that she has made an inventory, cannot by action collect the debts due to the estate. *Abercromby & Chabot*, 7, Q. L. R., 371 S. C. R. 1881.

#### IV. CUMULATION OF.

15. Action was brought for the recovery from defendant, of \$1,400 being for the penalties alleged to have been incurred by him for having on or about the 18th October 1880, at the election of a member to serve in the House of Commons, for the electoral district of Brome, illegally and corruptly offered and promised to give and pay divers sums of money to seven different persons voting in the said electoral district to bribe them to vote for Mr. M, then a candidate for election. The declaration set forth seven distinct offences against the bribery clause No. 92 of the Dominion Election Act, 37 Vict. Cap. 9 by the defendant whereby he was subject to seven distinct and separate penalties of \$200 and which were cumulated as to amount, and by one and the same action sued for the gross amount of such penalties. The defendant filled an *Exception dilatoire* calling upon plaintiff to make his option as to which one of said offences he intended to proceed upon alleging that plaintiff had illegally cumulated seven different offences in the same action. Held that suits under the Dominion Election Act of 1874, to recover penalties for bribery are civil suits for the recovery of debt, controlled by the procedure governing actions in the Province in which they are instituted, and in consequence in this Province seven distinct and separate penalties for contravention of the Election Act may be cumulated as to amount in one and the same action. *Joyal & Safford*, 25 L. C. J., 166, S.C., 1881.

#### VI. EN BORNAGE.

16. If after the institution of an action *en bornage* the parties come to a compromise and understanding as to the boundaries, no other proceedings can be made in the cause. *McFaul & McFaul*, 12 R. L., 597, S. C. 1864.

17. The appellant in his action *en bornage* alleged that he and his *auteurs* were proprietors of lot No. 15 in the 7th range of the township of Leeds and that there was a part of this lot which adjoined lot No. 14, belonging to respondent. In support of his title, appellant produced letters patent, granted to his father in September, 1824, his fathers will of 1855, by which the lot in question was bequeathed to him and his brother James and a transfer from James to him of May 1871. Respondent objected that the probate of the will was not proved. But besides this it appeared that what was granted to appellants father by the letters patent contained 139 acres, while the two sons legatees had sold each his half as 100 acres, leaving a large *gore* which they pretended belonged to them, but of which there was no proof. In fact the proof of title was the other way as one of the brothers testified that the respondent had been in

possession of the disputed part. *Held* confirming the judgement of first instance that the action could not be maintained for want of proof of title. *Mann & Hogan*, 8 Q. L. R. 1., & 11 R. L. 334, Q. B. 1881.

18.—*Sur une action en bornage, la Cour Supérieure a ordonné à un arpenteur de faire un plan des lieux, d'établir les lignes de division conformément à la loi, aux titres et à la possession des parties, et d'y poser des bornes pour délimiter définitivement leurs héritages. Deux opérations ont eu lieu, en vertu de cet interlocutoire, et des bornes ont été placées chaque fois, dans deux lignes différents, à une distance d'environ douze pieds l'une de l'autre. Le premier rapport a été rejeté et le second homologué. Jugé : infirmant le jugement rendu en première instance : 10. Que la Cour ne pouvait ordonner que des bornes fussent placées sans décider, par son jugement, quelle serait la ligne de division où les bornes devaient être placées. Loiseau & Paradis, 1, Q. B. R., 264., Q. B., 1881.*

19.—*Que nonobstant les arpentages qui ont eu lieu, il n'y a pas dans le dossier, de données suffisantes pour établir la ligne de division entre les héritages des parties. Ibid.*

20.—*Que la Cour peut, dans ce cas, ordonner un nouvel arpentage et la production d'extraits des plans et livres de renvoi officiels, ainsi que des extraits des anciens terriers et des titres enregistrés aux bureaux d'enregistrement, concernant les héritages en question, afin d'y puiser les informations nécessaires pour ordonner le bornage. Ibid.*

21.—*Que les dépens d'une action en bornage qui n'est pas contestée doivent être divisés, et non payés par le défendeur. Ibid.*

22. Le Demandeur poursuit le Défendeur, le 21 Janvier 1876, et il alléguait, dans sa déclaration, qu'il était propriétaire d'un certain terrain dans le Township de Kildare contigu à un autre terrain, la propriété et en la possession du Défendeur en cette cause, et il demandait contre le Défendeur en cette cause, une condamnation à \$500 de dommages, et le bornage dans la forme ordinaire.

Jugé : Que lors de l'homologation du rapport de bornage d'un arpenteur, la partie qui fait motion pour le rejet du rapport ne sera pas admise à alléguer que l'arpenteur ne pourrait pas être nommé, parce qu'il avait déjà agi dans la cause, qu'il avait formé son opinion et fait un rapport précédent qui a été rejeté par la cour, pour cause d'informalité, et que cette objection, si elle eût pu valoir, aurait dû être faite lors de la nomination du même arpenteur, en second lieu. (1) *Forest & Heathers*, 11 R. L., 7, S. C. 1881.

23. Qu'un arpenteur qui est nommé pour procéder au bornage dans une ligne déterminée par la cour, et pour faire des procédés qui lui sont indiqués dans le jugement, n'est pas tenu de se faire assermenter de nouveau, mais qu'il peut procéder sous son serment d'office. Qu'un rapport de la signification

d'un avis donné par l'arpenteur aux parties, constatant que l'avis a été signifié entre une heure et quatre heures de l'après-midi, est suffisant et qu'il indique suffisamment l'heure de la signification. *Ib.*

24. Qu'un jugement, qui, dans une action en bornage, après avoir reconnu le fond du droit de la partie demanderesse, et avoir prononcé contre les prétentions de la partie défenderesse, ordonne le bornage dans un lieu déterminé par le jugement, est réputé définitif sur le fond, et non pas simplement interrogatoire, et que le même tribunal ne peut, lors de l'audition finale de la cause, modifier ou changer les dispositions de ce jugement. *Ib.*

25. Qu'un défendeur qui, dans une action en bornage, plaide d'abord par une défense en droit, puis par une défense en fait et subsidiairement, par une exception péremptoire dans laquelle tout en se déclarant prêt à borner, il émet des prétentions qui sont rejetées par la cour, sera condamné à payer les frais de l'action. *Ib.*

26. In an action *en bornage* between two neighboring proprietors, if one of the parties has more land than his deed calls for and the other less, it will be taken as a proof of the necessity of a change of boundary and an order to establish this, the judge may and should refer to the *Cadastre*, land books and plans, but where one party has his proper quantity of land according to his deed and the other has not, he cannot object to the boundary line between them unless he put the proprietor on the other side into the cause as an interested party. *Boulet & Bourdoin*, 12, R. L. 121 S. C. 1882.

27. In an action *en bornage*, the court ordered an *arpenteur* to visit the place to establish whether, as pretended by defendant, a public highway intervened between his land and that of plaintiff and if not to make a report of the state of the premises to the Court. Leave to appeal was applied for on the ground that the Court had no right to refer the case to an *arpenteur* for that was to delegate its authority, and if the *arpenteur* was to be considered an expert three should have been named instead of one. Leave to appeal refused. *L'Ainé & Hamel*, 6 L. N. 154, Q. B. 1883.

#### VII. EN COMPLAINTE.

28. In an action in complainte the plaintiff who proves his possession at the time of the trouble of which he complains, is presumed to have had possession from the date of the title which he produces, and he may, to complete his possession, join with his own that of his *auteurs*. *Rondeau & Charbonneau*, 11, R. L., 292, S. C. 1882.

29. And where the defendant pleads possession by sufferance, he cannot in order to show title shew that the character of his position is changed, but on the contrary it must be presumed to have remained always the same. *Ib.*

(1) In appeal

30. And in such action, the Court will take notice of the titles of the parties in order to decide if the possession of the one or the other is sufficient to authorize a possessory action, and may also base his judgment on the fact, that the possession of one of the parties has been added to that of him from whom he derives his title in order to complete it. *Id.*

#### VIII. EN DÉCLARATION D'HYPOTHÈQUE.

31.—In an action in declaration of hypothec against the *tiers détenteurs* of an immoveable property, the defendants pleaded that when they purchased they were shown a statement between their immediate vendor and plaintiff which plaintiff had acknowledged to be correct and had signed and which showed a balance due of \$1,442.43, which had since been paid. Plaintiff demurred on the ground that the defendants could not plead matters personal to their vendor against whom plaintiff had judgment for the amount he claimed. *Held* that the plea was good and demurrer dismissed. *Dubuc & Kidston*, 7 Q. L. R., 43 S. C., 1881.

#### IX. EN DÉCLARATION DE PATERNITÉ.

32. The Plaintiff tutor to a minor child sued the defendant in declaration of the paternité and for the maintenance of the child.

The defendant pleaded a *défense en fait* and also the misconduct of the mother as well as a demurrer on the ground that he, the defendant, had not been given by the action the alternative of taking charge of the child. *Held* that neither the misconduct of the mother nor the ground of the demurrer were an answer to the action, but that as a *commencement de preuve par écrit* was wanting, and there was nothing but a question put by the defendant in cross examination of a witness to let in parole evidence that the proof was insufficient and the action ought to have been dismissed. *Turcotte & Nacke*, 7, Q. L. R. 196, S. C. R. 1881.

33. In an action *en déclaration de paternité* the defendant admitted the connection with the mother, but assigned a date which would disprove his paternity of the child, and there was no evidence of improper conduct on the part of the mother, otherwise. *Held*, that the Court would give weight to her declaration on oath that the defendant was the father. Absolute certainty in such cases is not required, it is sufficient to establish a strong probability that the defendant is the father. *Denault & Banville*, 7 L. N. 149 S. C.

#### X. EN DESTITUTION

34. Action by certain legatees under the will of the late W. Y. asking for the removal of the defendant, sole surviving executor under the will and for the appointment of a sequestrator to the estate. Proof that the defendant had advanced or lent money to two of his sons and to others of the descen-

dants of the testator to the amount of \$17,000 without guarantee and that one of the persons to whom the money was so advanced, had since died insolvent, that the defendant himself had paid no interest on the sums lent by him, and had neglected to pay a judgment against him for \$939.29. *Held* that there was maladministration and petition granted. *Howard and Yule*, 4, L. N. 126, S. C. 1881.

#### XI. EN PARTAGE.

35. The defendant in an action *en partage* has not the right to ask that the partition be delayed until the plaintiff, who has administered the property of which the partition is demanded, shall have rendered an account of his administration. *Roy & Roy*, 12 R. L. 622 S. C. 1884.

#### XII. EN REDDITION DE COMPTE.

36. In an action *en reddition* in which an account had already been rendered but not accepted, and plaintiff had all the papers and vouchers in his possession, defendant was ordered to account in three weeks from the time plaintiff should produce the papers. *Tremblay & Jodoin*, 4 L. N. 359 S. C. 1881.

37. An action *en reddition de compte* is premature if taken before the enterprise of which it asks an account is terminated. *Berger & Métié*, 1 Q. B. R. 322, Q. B. 1881.

38. The defendant being sued in an action to account, pleaded that he had already rendered an account to the plaintiff and produced one again with the plea. The plaintiff instead of asking for judgment as to the obligation of the defendant, to render an account proceeded to contest the account filed. Judgment proceeded on the merits of the action at the same time as on the contestation of the account and was confirmed in appeal. *Davis & Cushing*, 12 R. L. 522 Q. B. 1864.

39. But in another case. *Held*, that when the defendant pretends that he has not rendered an account but files one with his plea, the court should decide first as to the obligation of the defendant to render an account and order that an account be filed as demanded by the action, and a judgment which decided at the same time the obligation to render an account and the merits of the account filed was reversed in review. *McAdam & Wilson* 12 R. L. 523 S. C. 1882.

40. In an action *en reddition de compte* if the parties do not first proceed to judgment on the question of the liability of the defendant to render an account, but go on to contest it, the Court will adjudicate on the pretensions of the parties as submitted. *Durochers & Lauzon* 12 R. L. 403 S. C. 1883.

41. In an action to account, the defendants pretended that it was not true either in fact or in law that they had refused to render an account, as alleged in the declaration. They had in fact rendered their account in due

form, and the action should have been *en débats de compte ou en réformation*, (*Trudelle v. Roy*, 4 L. C., Rep. 222, *Cummings & Taylor*, 4 L. C. Jur. 304.) Under any circumstances the plaintiffs should not have asked that the defendants should be condemned to pay costs, and that they had the right to contest the action to that extent. *Held that the rendering of an account à l'amiable which has not been accepted does not relieve a defendant compte from the obligation of rendering an account en justice, but the defendant will not be condemned to pay costs.* (1) *Muldoon & Dunn*, 7 L. N. 239, S. C., 1884.

42. Where a defendant, in an action for an account of his administration of real estate under a special agreement, pleads, first, that he has never been put in default to render an account, and has always been ready to account, and files an account with his pleas, and further pleads that he owes nothing under the alleged agreement, *held*, that the account accompanying his plea will not be rejected on motion as irregular and prematurely filed. *Dorion & Dorion*, 7 L. N., 397, and *M. L. R.*, 1 Q. B., 65, 1884.

43. And an account rendered in such case should not be rejected on motion, on the ground that the chapter of disbursements contains items having no apparent connection with the administration of the property, this being a question to be determined only on a *débat de compte*. *Ib.*

### XIII. EN RÉMÉRÉ

44. Plaintiff brought action against defendant for the enforcement of his right of redemption stipulated to be exercised within two years, and made a legal tender by a notary of \$9,500 which defendant refused, being the amount payable under the deed of redemption. The action was served on the day before which the two years would have expired. *Held* that the action *en réméré* need not be returned into Court before the expiration of the stipulated delay. *Trudel & Bouchard* 27 L. C. J. 218, S. C. 1883.

45. But such action is properly directed against the purchaser, notwithstanding that he may have abandoned the property in a hypothecary action against him and that a curator to the *délaissement* has been appointed, because such a *délaissement* does not divest the proprietor of his property but simply of the possession of it. It pretends that a deposit of money is unnecessary. *Ib.*

### XIV. EN RÉINTEGRANDE.

46. The plaintiff for about seventeen years previous to the acts complained of possessed and worked a certain Sugary on the South half of Lot No 26, in the 4th range of Shawenegan. The defendant purchased the north half of the same lot in March 1880, immediately preceding the action. There was no boundary line of any kind between the two half lots. In the spring, plaintiff gave permission to one M. to work the sugary in ques-

tion, M. went to the shanty, *cabane*, which the plaintiff had used for several years previously for the working of the sugary and used a part of the sugar troughs and spouts which the plaintiff had left in shanty from previous years. M. also tapped about 200 trees and prepared firewood for boiling sap. The defendant then appeared, began to tap some of the trees and took possession of a part of the sugar troughs and spouts which the plaintiff had left there from previous years, and even went so far as to consume the firewood cut by M. for his own use. M. having remonstrated in vain reported what occurred to the plaintiff who, accompanied by witnesses, went to the shanty and finding the defendant working there, asked him to leave, but the defendant refused. Plaintiff brought action *en réintégrande*. Defendant pleaded that such action did not lie without proof that the plaintiff had been dispossessed by violence and that the only action open to plaintiff was *en bornage*. *Held* that proof that defendant took possession of the sugary and material against the will of the plaintiff and persisted in holding them constituted violence in the eyes of the law, and plaintiff having enjoyed his property for seventeen years, was not bound to bring action *en bornage*. *Gerbeau & Blais*. 7 Q. L. R. 13 S. C. R. 1880

47. Action *en ré-intégrande*. The plaintiff complained that the defendants had by violence taken possession of his land to the damage of \$200. The defendants pleaded that they had taken possession of the land with the consent of the plaintiff. The action was dismissed. *Held* that it was proved that the defendants had entered into possession with the consent of the plaintiff and that the land was bought by the company for a sum of \$117, that therefore the present demand was inadmissible. *Pigeon & Montreal & Sorel Railway Co.* 6 L. N., 4, S. C. R., 1882.

48. An action *en réintégrande* brought by the owner of a lot of land on the bank of the river Richelieu, complaining of the invasion of his possession of another piece of land forming part of an old road leading from the front road to the river, and being the continuation of a road called the "Grande Ligne." *Held* that there had been no dispossession and the evidence of title was conflicting and action dismissed. (1) *Pinsonnault & Hébert*, 7 L. N. 276, Q. B. 1884.

### XV. EN RÉPÉTITION.

49. Action *en répétition* of the amount of a note paid by plaintiff to defendant. Plaintiff paid a note on which he was second endorser.

The note went to protest and defendant made plaintiff pay it. Having taken it up the plaintiff saw that it was not stamped and concluded that he had never been liable to pay it. Plea that the note had been stamped but that the stamps had fallen off. There was evidence of two witnesses that the note had

(1) In appeal.

(1) In Supreme Court appeal allowed, 1886.



been stamped and *Held* that under the stamp act there was no penalty after payment and as plaintiff's claim was in the nature of a penalty for the absence of stamps, he had no right to recover. *Prevost & Hochelaga Bank*, 4, L. N. 340, S. C. 1881.

50. Where the plaintiff had paid voluntarily to a notary the amount of an account which he had presented to him *held* that he had no right of action to recover any portion of the money, though he established that the value of the services rendered was much less than what he had been charged for *Fradet & Guay*, 11 R. L. 531. Q. B. 1882.

#### XVI. EN SÉPARATION DE BIENS.

51. A wife who sues in separation of property may before judgment declare that she has no *reprises matrimoniales* to exercise and that she intends to renounce the community, and in such case the Court will order that the judgment of separation be registered in the registry office of the registration division in which the parties have there domicile. *Deschamps & Charbonneau*, 11 R. L. 556 S. C. 1878. *Pepin & Labelle*, 11 R. L. 558 S. C. 1882.

#### XVII. EN SÉPARATION DE CORPS ET DE BIENS.

52. In a separation case the plaintiff (the wife) obtained an order to attach the movables of defendant her husband for the protection of her rights in the community. Under this order a seizure was made in the hands of the Banque Jacques-Cartier. The defendant presented a petition for the removal of the attachment as illegal and informal because it did not comply with Arts 834, 987, C. C. P. Plaintiff in reply cited Art, 204 C. C., and *Morgan & Emerson* S.C. 1875 (1). *Held* that the attachment was well taken but that the husband would have a right to claim delivery of the property on assuming the responsibility of a judicial guardian. *Gagnon & Lalonde*, 4 L. N. 85, S. C. 1881.

53. In an action by a wife for separation from bed and board she asked by motion that the defendant, her husband, be foreclosed from making any proof in the case unless he paid her attorney for conducting the case. She had already been granted \$20 per month alimony by the court. Motion refused. *McDougall & Scott*, 4 L. N. 323, S. C. 1881.

54. Under no circumstances can the defendant be examined as a witness to an action *en séparation de corps*, to prove the plaintiff's case. *Ducharme & Loiseleur*, 27 L. O. J. 145, S. C. 1883.

#### XXI. FOR PENALTY UNDER QUEBEC ELECTIONS ACT.

55. Action to recover from the Mayor and Secretary treasurer of the municipality of the Parish of St. Joseph de Chambly, the sum of \$200 each for alleged violation of the Quebec Elections Act. The electoral list was to be in duplicate under section 12, one of which was to be kept in the Archives of the

(1). Unreported.

Municipality and the other to be transmitted to the Registrar of the registration division in which was situated the municipality, within eight days following the day upon which such list should have come into force, by the secretary Treasurer or by the Mayor, under a penalty of \$200 or of imprisonment of six months in default of payment against each in case of contravention of this provision. It was charged against the Mayor and Secretary Treasurer that in 1880, they had omitted to transmit to the registrar within the eight days required, the duplicate in question whereby the penalty of two hundred dollars against each was incurred. Demurrer on the ground that it did not follow that the defendants were liable to the penalty by non-transmission of the duplicate list because they had the right of transmitting with the same effect the copy mentioned in Section 39, and it was not alleged that they had not transmitted such copy. *Held* incumbent in the plaintiff to aver not only that the duplicate referred to in Section 38, had not been transmitted, but that the copy mentioned in Section 39, had not been transmitted. *Tavernier & Robert*, 4, L. N. 131. S. C. 1881.

56. In an action under the Dominion contested Elections Act in which demand several penalties were joined. *Held* that a deposit of \$50 for each penalty demanded should be made. *Choquette & Hubert*, 10. Q. L. R., 192. Q. B. 1884.

#### XX HYPOTHECARY, *see* HYPOTHEC.

57. In a hypothecary action it is not necessary to specifically allege, but it is necessary to prove, that the person creating the hypothec was proprietor and had the power to grant the mortgage in question. *Union Bank & Nutbrown*. 10 Q. L. R. 287, S. C. R., 1884.

#### XXII. IN EJECTMENT.

58. An action in ejectment under a lease from 1st May to 1st May instituted on the latter date on the ground that the lease had expired was held to be premature. *Donaldson & Charles* 4 L. N. 35 Q. B. 1880.

#### XXIII. INTEREST IN.

59 Assignees or transferees in virtue of a voluntary assignment by an insolvent for the benefit of his creditors have no legal status to appear and plead on behalf of the insolvent estate. *Whitney & Badeux*, 12 R. L. 518 S. C. 1861.

60. Action by the assignees of the Canada Agricultural Insurance Co. for \$200 being the amount of four calls of ten per cent each upon certain shares of the Company held by defendant. The first two calls were made by the directors of the Company, prior to its liquidation, the latter were made by the plaintiffs *de-qualité* as liquidators of the company's affairs. *Held* that under 41 Vic. Cap. 38 the liquidators were duly qualified to make calls and to sue for them. *Ross & Guibault*, 4 L. R. 415 S. C. 1881.

61. Where petitory action was taken against the holder of an immoveable.—Held that he could not plead that the grant of the Crown to the plaintiff had lapsed owing to the fact that the plaintiff and those from whom he derived had not conformed to the conditions of the letters patent. *Robert & Leblanc*, 11 R. L. 493 S. C. 1882.

62. The defendant was sued on a promissory note and pleaded that the note had been made by him in favor of a commercial firm since insolvent, that it had passed into the hands of the assignees of the said firm, that it did not appear that the insolvent had ever legally recovered possession of it and that the plaintiff had no interest, but was merely a pre-nom for the creditors to whom it belonged. Held that the defendant could not plead the rights of the creditors but was bound to pay the amount of the note to the holder. *Lemay & Boissinot*, 10 Q. L. R. 90, S. C. 1883.

63. In another case, an insolvent trader assigned to three persons for the benefit of his creditors, and on a seizure of his effects by a creditor who was not a party to the assignment, the assignees intervened. Held that they had no interest to plead on behalf of others, and that their intervention to that effect would be dismissed with costs against them personally. *Tourangeau & Dubeau*, 10 Q. L. R. 92. 1884.

64. Appeal from a judgment dismissing an action in revendication by which the appellant claimed certain machinery which he contended the respondent detained illegally. Appellant in his declaration alleged that he bought this machinery by deed of the 12th May 1881 from the Canada Paper Co. who had themselves bought it from G. & Co. by deed of 27th April, 1880. Respondant answered this action by a plea alleging that he detained this machinery under a voluntary assignment of the 13th June, 1881; made by said "G. & Co." of the whole of their estate to him for the benefit of their creditors, and that when G. & Co. sold it to the Canada Paper Co. they were insolvent. Held reversing the judgment of the Court of Appeal Montreal, 7 L. N. 1882, that an assignee holding property under a voluntary assignment to him by an insolvent for the benefit of his creditors, parties to the deed of assignment, is not entitled to plead in his own name in reference to such property. Such an assignment merely enables him to represent the assignor and to exercise the assignor's actions and not those pertaining to creditors alone. *Burland & Moffatt*, 8 L. N. 147, 28 L. C. J. 214, Su. Ct. 1885.

#### XXV NATURE OF

65. Action to compel the defendant, resident in the District of Beauharnois, to carry out a promise, which the plaintiff alleged had been made by correspondence and telegrams, to purchase certain immoveable property situated in the District of Terrebonne, and to

execute a deed of sale, which had been duly tendered to defendant;—the plaintiff asking by the conclusions of his declaration that the judgment should avail in place of the deed in default of defendant's executing the same. The defendant was personally served in the District of Montreal, and denied the jurisdiction of the Court by a declinatory exception alleging that the action was a real or mixed one, involving the title to lands in another district, and contending that he should have been summoned before the Court of his domicile, or of the district where the immoveable was situate, under article 37 of the Code of Procedure. Held that the action was purely personal and exception dismissed. Leave to appeal from this judgment was refused.—*McMartin & Walsh*, 5 L. N. 402 S. C. 1882.

#### XXVI. ON DETAILED ACCOUNT.

66. An action for professional fees and disbursement in a case of which the number and the title are given, unaccompanied, either at the time of the service, or at the time of the return, with any account of details, is not an action "founded upon detailed account," within the meaning of article 91 C. C. P. although a bill of costs be subsequently filed in the case; and that even if it were brought upon, and accompanied with the bill of costs, it still would not come under the terms of the article, and the clerk of the Court has therefore no right to render judgment forthwith upon production of the affidavit mentioned in that article. *Langlois & St-Pierre*, 9 Q. L. R. 95 S. C. R. 1883.

#### XXVII ON TRANSFER.

67. The property on which was a life rent was sold by the sheriff and the owner of the rent, having secured it by an opposition *afin de charge* which was allowed, transferred it to plaintiff, signified the transfer to defendant, and brought action in default of payment based on the transfer. Defendant pleaded that plaintiff's title was properly the judgment on the opposition and not the transfer, and this view was maintained by the Court in the first instance, but in review was reversed on the ground that the transfer constituted his proper title. *Wright & Moreau*, 5 L. N. 186, S. C. R. 1882 & M. L. R., 1 Q. B., 456, 1885.

#### XXVIII PETITORY.

68. In a petitory action to recover real estate from the hands of an Assignee in insolvency under the Insolvent Act, 1875 and its amendments. Held reversing the judgment of the Superior Court, that the action would not lie as respondent should have proceeded by summary petition under the Insolvent Act 1875. Sec 125. *Fair & Désilets*, 4 L. N. 84. Q. B. 1881.

69. In 1834, the father of the plaintiff made his will leaving the property of which he should die possessed to the children who should survive him. Later his wife also made

a will leaving her property to her husband. For some months previous to their death both husband and wife lived with the defendant a relation, who cared for them, paid the expenses of their last illness and of their funeral. They left some property consisting of houses, a lot of land, &c. This property had been in their possession since 1821, the date of the marriage. But in 1850 they had given the property by deed of donation *entre vifs*, to one of their sons a bachelor travelling abroad, who however was present at the time the donation was made and accepted it, but who subsequently, a short time afterwards went abroad again and remained there returning only once for four or five days. After the death of the parents, no heirs presenting themselves, the defendant took possession of the property and received the revenue of it for three or four years. The plaintiff, one of the daughters who was absent from the country at the time of the death of her parents, having returned to Canada, purchased the rights of her brothers and sisters in their parents succession and proceeded by petitory action against the defendant to recover the property. The defendant instead of asking by preliminary exception to be dismissed from the case, on pointing out the real defendant for whom he held, filed a plea to the merits by which he set up the donation *entre vif* to the absent son and the consequent want of title in the plaintiff and her *auteurs*; and in order to establish the validity of such donation pleaded that there had been a feigned delivery (*tradition feinte*) of the property, inasmuch as the *acte* of donation included a provision by which the donor reserved to himself a right of habitation on the property in common with the donee. He also set up a real tradition, a symbolic tradition and a tradition *longae manus*. He also pleaded a right of retention to the extent of \$400, for the care, &c, of the deceased. *Held* in review, confirming the judgment of the Court below, that a holder by precarious title could not ask simply for the dismissal of the action as defendant had done, but should ask to be discharged from the action in making known by preliminary exception the name of the person from whom he held. *Lesage & Prud'homme* 26 L. C. J. 213, S. C. R. 1882.

70. And the action *en reddition de compte* which might be brought in such cases was not exclusive and did not affect the right to bring an action petitoire as the plaintiff had done. *Ibid*.

71. And *held* also that prior to the Code a donation was null if the donor without reserve of the usufruct remained in possession of the property until his death, nor did the fact that the donor had reserved to himself a right of habitation constitute a feigned delivery of the property. *Ibid*.

72. When a petitionary action is brought against a lessee it is sufficient for him to point

out his lessor by preliminary plea, and it is not necessary that he should call in the lessor into the case. *Demers & Samson*, 8 Q. L. R. 348, S. C. 1882.

73. Two pieces of land claimed by the plaintiff; the first is arpents in front by like depth, at St. Jerome, with buildings; the second is a quarter of an arpent front, by twenty-five arpents in depth, also with buildings. The plaintiff claimed as representing all the three children who where surviving when J. B. L. died in 1872. He was plaintiff's father, and left by will these lands to his children, who would be alive at his death. The declaration charged defendant with having usurped possession of the lands from the time of the death of J. B. L. The defendant pleaded a *défense au fonds en fait*, and that the plaintiff's title was not perfect, for J. B. L. left a son, Joseph surviving him, that J. B. L. and his wife gave Joseph, by donation, those lands on the 10th October, 1850, that it was false that the defendant had seized the *propriété* of the lands referred to, on the contrary, that he had since the death of J. B. L. only continued to occupy them à *titre précaire*, administering the lands as during the lifetime of J. B. *Held* on the evidence that defendants title was tortuous and bad and the judgment in favor of the plaintiff deducting one fourth for the absent son was confirmed. *Lesage & Prud'homme*, 5 L. N. 251. S. C. R. 1882.

74. The tenant sued in a petitory action is not entitled to ask for the dismissal of the action, but only that he be dismissed from the cause when the lessor declared by him has been brought in. *Dupuis & Bouvier*, 7 L. N. 92 & 27, L. C. J. 339. S. C. R. 1883.

75. And the indication by the tenant of the name of his lessor should be by preliminary plea and not by temporary exception. *Ibid*

#### XXIV. POPULAIRE.

76. When action is brought to set aside an assessment roll such action is in the nature of a popular action and any other party, whose name is on such assessment roll, may intervene to represent his rights. *Molson's Bank & City of Montreal*. 11 R. L. 542, S. C. 1881.

#### XXX. POSSESSORY.

77. Les appellants, ayant il y a nombre d'années, construit à leur frais et pour l'alimentation de leur moulins un chemin *ponté* dans la paroisse de Ste-Geneviève, renouvellèrent le *pontage* à mesure que le besoin s'en faisait sentir, permettant au public d'y passer. En 1880, ils firent l'acquisition d'une lisière de terre voisine, ouvrirent un chemin privé, qu'ils fermèrent d'une barrière à chaque extrémité, enlevèrent les bons madriers qui se trouvaient sur l'ancien chemin pour les placer sur le nouveau, tout en jetant de côté les mauvais. L'intimé poursuivit par une action possessoire concluant à la remise des madriers ou au paiement de \$2,500 de dommages et à ce qu'elle fut maintenue dans la possession

du chemin. Le jugement de la cour inférieure a accepté les conclusions possessoires de l'action, mais refusé les dommages. En appel jugé (renversant le jugement de la cour inférieure) que les appelants ayant enlevé le *pontage* lequel ne tenait *ni à fer ni à clous* et n'avait pas été mis à la *perpétuelle demeure* n'a pas eu pour but d'enlever à l'intimée la possession civile du chemin, et qu'en conséquence les conclusions possessoires auraient dû être refusées. *Price & Corporation de Ste-Geneviève de Batiscan*, 8, Q. L. R. 67 Q. B., 1881.

78. In a possessory action, plaintiff, in order to succeed must prove that he has had possession *de facto* by him and his *auteurs* of the land in question for more than a year. *Rondeau & Charbonneau*, 11 R. L. 379 S. C. 1882.

79. When the owner of a lot of land enclosed by a fence agrees with his neighbour to have the boundary line made—he does not thereby lose his right of action for encroachments, especially if he has not accepted the line drawn, and similarly his neighbour has a right against him. *Robitaille & Joly*, 11 R. L. 347 S. C. 1882.

80. In an action for damages caused to an immoveable property of which the plaintiff claims to have been in possession as proprietor, proof of possession for upwards of a year and a day is sufficient to sustain the action, and in such action, the damages may be based, not only upon the value of the wood cut, but also on the depreciation of the value of the land in question *Robillard & Tremblay*, 11. R. L. 465 S. C. 1882.

81. In a possessory action the defendant may invoke his own title and that of him from whom he derived in order to prove the nature and character of his possession, but where the lessee of land notified or protested his lessor who had been in possession for upwards of ten years that he the lessee was proprietor and forbidding his lessor or any person on his behalf to set foot on the land in question.—*Held* that the lessor was justified in proceeding against him by possessory action. *Paquette & Brunette*, 11, R. L. 485 S. C. 1882.

82. And where the possession of the lessor himself was commenced by violence. *Held* that the possession necessary to found a possessory action would count from the time the violence ceased. *Ibid*

### XXXI. PRO SOCIO.

83. Action to recover \$80 alleged to have been advanced by plaintiff to defendant to buy a piece of land, and \$30 value of harness belonging to plaintiff and taken by defendant. The defendant pleaded that these items fell into a partnership then existing between them and still unliquidated, and the Court was of opinion that the plea was made out. Action dismissed. *Benallack & Chapman*. 5 L. N. 111 S. C. 1881.

### XXXIII. QUI TAM.

84. Qui tam action for omission to register a partnership. Exception to the form on a number of grounds among which was that the action concluded for a joint and several penalty. *Held* good under the statute C. S. L. C., Cap. 65, Sec. 1, par. 4. *Bernard & Gaudry*. 4 L. N. 53 S. C. 1881.

85. But on the merits of the same action this judgment was reversed and the action dismissed. *Per curiam*.—I am of opinion that the defendants are right in their proposition that such an action as this for a single \$200, penalty against two wrong doers, each of whom has to answer only for himself, and each of whom has incurred a penalty of \$200 is bad. *Bernard & Gaudry*. 4 L. N. 385 S. C., 1881.

86. Dans les actions *qui tam*, le poursuivant doit indiquer dans le bref non-seulement ses noms, qualités et domicile, mais ceux de la partie conjointe à laquelle appartient une partie de l'amende; et que, à défaut de ce faire, l'action sera renvoyée, même sans exception à la forme. *Ferland & Morissette*, 9 Q. L. R., 70. S. C. 1883.

87. In two cases *Held* that a reference in the affidavit required by 27 and 28 Vic. Cap. 43 to the action mentioned in the precept "herewith filed" is not a sufficient identification of the action sworn to with that actually prosecuted, as specified in the declaration. *Sipling & the Sparham Fireproof roofing Co., & Reed and the Sparham Fireproof roofing Co.*, 7 L. N. 390; and M. L. R. 1 Q. B., 22 & 26. 1884.

### XXXIV. REDHIBITORY.

88. Action for the price of a horse sold by plaintiff to defendant; plea *inter alia* that there was warranty and representation at the sale that the horse was only seven years of age and free from vice, whereas he was eleven and suffered from redhibitory vices. The action was instituted more than fourteen months after the sale and delivery of the horse. *Held* too late. *Crevier & la Société d'Agriculture de Berthier*, 4. L. N. 373 S. C., 1881.

### XXXVII. RIGHT OF

89. *Where arises*.—In the case of a notarial obligation executed at Montreal.—*Held* that the right of action for the recovery of the debt due thereunder originated at Montreal and not at the place where demand of payment had to be made. *Duchesnay & LaRocque*, 25 S. C. J. 228, S. C. R., 1880.

90. Declinatory exception on the ground that the contract of hiring was not made as alleged in this Province, but in the Province of Ontario, and that the service, which was a personal service in Montreal, did not bring the defendant before the Court so as to give it jurisdiction. The defendant

relied on *Gosset & Robin* (1). *Per Curiam*, "*Gosset & Robin* was an action *pro socio* where the service depended upon the domicile of the party, and it was pretended that in such a case as that where the action was not purely personal, as it is here, that the defendants being absentees and having their principal place of business in Jersey, where their property might have been liable to division under the judgment of Court, could be called in by advertisement, because they had property in Gaspé. Such a case as that is of course clearly distinguishable from this. Here the action is purely personal, as required by Art. 34 of the Code of Procedure, not mixed as it was there, and the terms of the judgment in that case leave no doubt of the ground upon which it rested. A personal action however follows the person, and a personal service in Montreal in such a case gives us under Art. 34 jurisdiction over it." *Lafrance & Jackson*, 4 L. N. 60. S. C. 1881.

91. Action for assessments in a Mutual Insurance Co. In August, 1878, the defendant who resided in Beauport, in the District of Quebec, made application to the Company plaintiff, whose head office is at Montreal, to be admitted a member. Defendant also sent a deposit note and undertook to pay such assessments as might to be made. The application was accepted and policy issued. On being sued at Montreal, defendant declined the jurisdiction. Exception dismissed. (1) *The Mutual Fire Insurance Co., of Joliette & Desrousselles*, 4 L. N. 220. S. C. 1881.

92. To give a right of action in a district other than that in which the defendant has his domicile, everything which constitutes the right of action must have taken place in such district, and several actions or causes of action belonging to different districts cannot be joined in order to bring the defendant from the jurisdiction of his domicile. *Archambault & Bolduc*, 2 Q. B. R., 110, Q. B., & *Faucher & Brown*, 2 Q. B. R., 168, Q. B., 1881.

93. The defendant domiciled at Three Rivers was summoned to Arthabaska as a witness in a case there pending between him and the plaintiff, and while in the last mentioned district was served with process of summons *ad res* commanding him to appear before the Court there to answer the suit of the plaintiff on a cause of action which arose in the district of Three Rivers. He declined the jurisdiction, but his declinatory plea was rejected on motion for informality in his appearance, and judgment was rendered against him by default. The defendant then filed an opposition to judgment repeating in substance among other matters his plea to the jurisdiction. He had previously obtained leave to appeal from the interlocutory judgment dismissing his declinatory exception,

but, not proceeding with such appeal within the delay fixed, the right of appeal was forfeited. *Held* reversing the judgement of the Superior Court that a witness coming into a district in which he is not domiciled in obedience to a writ of subpoena may, in the absence of fraud or bad faith, be validly served with a summons *ad res* to appear before the Court of that district. *Bruneau & McCaffrey*, 7 Q. L. R., 364 & 1 Q. B. R., 313 Q. B., 1881.

94. Appellants, merchants, doing business at Montreal, brought suit in the Superior Court there for recovery of \$197.88 as the price and value of goods sold and delivered to respondent, a trader doing business at Ile Verte, in the district of Kamouraska. The sale was made thro' a commercial traveller who visited defendant at Ile Verte and there took an order for the goods in question which was forwarded by him to his principals at Montreal, who accepting it, thus filled the order and shipped the goods to respondent by the carriers chosen by him and according to his orders. *Held* that the right of action arose where the order was taken. *Gault & Bertrand*, 25 L. C. J., 340 Q. B., 1881.

95. Where a sale of goods takes place in one district and a written agreement is entered into in another district, setting forth such sale but dated in the district where the sale actually took place, a right of action arises in the latter district. *Riopelle & Fleury*, 12 R. L., 85. S. C., 1883.

96. Where a person in Arthabaska sold goods for a firm of millers in Ontario, at his own risk and without any commission other than what he could make over and above the mill price, and on the arrival of the goods they were refused on account of the terms of payment being more onerous than contracted for, and the purchaser brought action in Arthabaska for the breach against the millers in Ontario. *Held* that the action should have been dismissed on declinatory exception. *Tourigny & Wheeler*, 9 Q. L. R. 198 S. C. R. 1883.

97. Where the action is in damages for failure to perform a contract the debtor may be sued at the place where the contract is made, though the failure to perform occurred in another district. *Quebec Steamship Co. & Morgan*, 6 L. N. 324, Q. B. 1883.

98. Action issued in the district of Quebec and served on the defendant at his domicile in the district of Aylmer. Defendant filed an exception *déclinatoire* setting up that the whole cause of action did not arise at Quebec. The original contract, which was for advances to get out timber, was made at Quebec. It being found advantageous to sell the timber in England the parties subsequently agreed that the plaintiff should send the timber there to be sold, the plaintiff paying the expenses at Quebec and in England. Exception dismissed and leave to appeal refused. *Conroy & Ross* 6 L. N. 154, Q. B. 1883.

(1) This question is settled as far as Mutual Insurance Cos. are concerned by Act of Quebec, 34 Vict. Cap. 16. Sec. 4, curiously enough not referred to in the report though passed long previously. Ed.

99. Where a debt is contracted in a foreign country the creditor may at his option summon the defendant before the Court of the district where he has his domicile, or before the Court of the district where his property is situated. *Paradis & Cuesteau*, 9, Q. L. R., 117. S. C. 1883.

## XXXIX SUSPENSION OF

100. Where several plaintiffs are each claiming a right against one defendant, or where several defendants each have a right to make a separate defense against the claim of one plaintiff, and there is only one general question to be settled which pervades the whole, the Court may by injunction direct proceedings to be stayed in the separate contestations until the question is determined in a direct action brought for the purpose of testing it. *North British and Mercantile Fire & Life Insurance Company, & Lamb*, 27. L. C. J. 222, & 5. L. N. 323. S. C. 1882.

## XLII TO RECOVER A LEGACY

101. In an action for the recovery of a legacy the heirs may be joined with the testamentary executors as defendants. *Royal Institution & Scott*, 5. L. N. 375. S. C. 1882.

## XLIII UNION OF

102. The appellant sued the respondent under the provisions of the Lessor and Lessees Act for rent, and in expulsion from certain premises leased to respondent by appellant. The respondent met this application by a plea in which he in effect, set forth that the deed of lease resulted from a deed of sale made on the same date of the house mentioned in the deed, and of other property, and which he was induced to make by the fraud of appellant, that the deed of sale ought to be declared null, and that in being declared null, the lease also must fail, and with it appellant's demand for rent and in expulsion. Respondent also brought a direct action to set aside the deed of sale as regards all the property so sold by him to appellant alleging the same facts. Both cases were in the Superior Court and both came at the same time before the same judges, the case under the Lessor and Lessees Act on the merits, and the suit to set aside the deed of sale on a demurrer to a plea of litis pendency. *Held* that they were properly united. *Chrétien Crowley*, 5. L. N. 268. & 2. Q. B. R 38., Q. B. 1882.

103. And where two cases have been united in the Court of first instance, the party who considers himself aggrieved by the judgment thereon cannot again separate them for the purpose of bringing one to review and one to appeal, but must inscribe them together either in review or in appeal. *Ib.* 1 Q. B. R. 391. 1881.

## ACTS OF PARLIAMENT

- I. APPLICATION OF WHEN RETROACTIVE.
- II. CONSTITUTIONALITY OF.
- III. INTERPRETATION OF.
- IV. PROCEEDINGS AFFECTING CONSTITUTIONALITY OF TO BE NOTIFIED TO ATTORNEY GENERAL.
- V. PROCEEDINGS AGAINST.
- VI. REPEAL OF.
- VII. TEMPERANCE ACT OF 1864.

## I. APPLICATION OF—WHEN RETROACTIVE.

104. The 25th February, 1861, the son of the Defendant was married, and by the contract of marriage, the defendant gave to the husband a gift of \$200 and also a certain property with the stipulation "*que les dits biens seraient propres au dit futur époux et aux siens de son côté, estoc et ligne.*" Of the marriage was born a daughter; the father died in 1863, and the mother remarried and had several children, half brothers and sisters of the defendants grand daughter. The latter died 1878, leaving the defendant, her grand father and her mother, brothers and sisters. The question was as to the right of the defendant to recover the property given by him to his son on his marriage. If the grand daughter had died before the promulgation of the Code, the defendant would undoubtedly have been entitled to receive back the property in virtue of the stipulation of *propres*, and also if the succession opened since the Code, should be governed by the former law. If, on the contrary, the succession should be governed by the Code, the defendants had no rights. *Held* that there was no *droit acquis* until the opening of the succession, and the law of the Code therefore applied without question of retroactivity. Judgment for plaintiff confirmed. *Robidoux & Lépine*, 4. L. N. 70. S. C. R. 1880.

## II. CONSTITUTIONALITY OF

105. The Act of the Legislature of Quebec, 38 Vic., Cap. 74, Sec. 4, ordering houses in which spirituous liquors are sold to be closed on Sundays, and on every day from 11 o'clock at night until 5 o'clock in the morning, is a police regulation within the power of the Provincial Legislature. *Blouin & Corporation of the City of Quebec*, 7 Q. L. R., 18 S. C., 1880.

106. But the licence Act of Quebec in so far as it imposes a penalty of imprisonment with hard labor is unconstitutional and *ultra vires* of the Quebec Legislature. *Collopy & Corporation of Quebec*, 7 Q. L. R., 19 S. C. 1879.

107. An Act of the local legislature authorizing the Lieutenant Governor to forfeit the right of exacting tolls on a toll bridge, and to transfer the property to others, is constitutional. *The municipality of Cleveland & the municipality of Melbourne*, 4 L. N., 278 Q. B., 1881.

108. The License Act of Quebec in so far as it pretends to prevent the sale of liquor is in

restraint of trade and unconstitutional. *De St-Aubin & Lafrance*, 8 Q. L. R., 190 C. C., 1881.

109. The statute of the Province of Quebec, 42-43 Vic., Cap. 4, ordering houses in which spirituous liquors are sold to be closed on Sundays and every day between eleven of the night and five of the morning is constitutional. *Poulin & Corporation of Quebec*, 7 Q. L. R., 334 Q. B., 1881.

110. The Act of the Dominion Parliament 43 Vic. Cap. 67, incorporating the Bell Telephone Company, granted to that Company, power to establish telephone lines in the several Provinces of the Dominion, &c. &c. The proof being that the business of the Company, was of a purely local character and confined to the district of Quebec, and it was not declared to be an undertaking for the general advantage of Canada, held to be unconstitutional and *ultra vires* of the Dominion Parliament. *Regina & Mohr*, 7 Q. L. R. 183, Q. B. 1881.

111. The act of the legislature of Quebec, 41 Vic. Cap. 3, Sec. 222, is not *ultra vires* and is not contrary to the powers conferred on the local legislature by Sec. 92, S. S. 15 of British North America Act. *Côté & Paradis* 11 L. N., 1 Q. B. 1881.

112. The pharmacy act of Quebec, 34 Vic. Cap. 52, is constitutional. *Bennet & The Pharmaceutical Association of the Province of Quebec*, 4 L. N. 125, Q. B. 1881.

113. The Canada Temperance Act of 1878, is constitutional and within the power and authority of the Parliament of Canada. *Russell & Regina*, 12. R. L. 664. P. C. 1882.

114. Case of *Dobie & Board of Temporalities*, (II. Dig.-37-189,) confirmed in P. C. and reported at length, 26 L. C. J. 170 P. C. 1882.

115. The Act of the Dominion Parliament, (37 Vic. Cap. 103) incorporating the Colonial Building & Investment Association is *ultra vires* and unconstitutional. *Loranger & Colonial Building & Investment Association*, 5 L. N. 116. Q. B. 1882.

116. The Quebec License Act (34 Vic. Cap. 2, and the Municipal Code are *ultra vires* of the Quebec Legislature in so far as they pretend to repeal the procedure clauses or any part of the Temperance Act of 1864. *Griffiths & Rioux*. 6 L. N. 211. S. C. 1883.

117. The license Act of Quebec is within the powers of the Provincial Legislatures under Sec 92 of the B. N. A. Act. *Molinari Exp*, 6 L. N. 395. S. C. 1883.

118. The Quebec Statute, 42-43 Vic., Cap. 4, ordering that places in which spirituous liquors are sold shall be closed on Sunday is constitutional. *Poulin & Corporation of Quebec*, 6 L. N., 214, Su. Ct., 1883.

119. The Act of the Quebec Legislature, 43 and 44 Vic., Cap. 9, Sec. 9, by which it is enacted that a duty of ten cents shall be impos-

ed, levied and collected on each promissory note receipt, bill of particulars exhibit, whatever produced and filed before the Superior Court, the Circuit Court or the Magistrates Court, such duties payable in stamps is unconstitutional and *ultra vires*. (1) *Reed & Mousseau*, 5 L. N., 101 S. C., and 8 S. C. Rep., 408 Su. C., and 7 L. N., 405 & 8 L. N. 50, P. C., 1884.

120 And to test the constitutionality of an Act by means of a rule against the Prothonotary is an irregular mode of procedure, though where all the parties have acquiesced, the Court will in its discretion overlook the technical difficulty and deal with the case as submitted. *Id.*

121. The act of the Province of Quebec 45 Vic. cap. 22, imposing a tax on banks etc., is constitutional. *Lambe & Sundry Companies*, 1 M. L. R. 23 Q. B. 1885.

### III. INTERPRETATION OF.

1. Sec. five of the Interpretation Act is hereby repealed and the following section enacted in lieu thereof.

"5. An Act of the Parliament of Canada may be amended, altered or repealed by any Act to be passed in the same session thereof.

"2. The repeal of any Act or part of an Act shall not revive any Act or provision of law repealed by such Act or part of an Act, or prevent the effect of any saving clause therein."

2. The sixteenth and thirty fifth clauses of section seven are hereby repealed and the following subsections enacted in lieu thereof :

"Sixteenth.—The word "oath" shall be construed as meaning a solemn affirmation, whenever the content applies to any person and case by whom and in which a solemn affirmation may be made instead of an oath, and in like cases the word "sworn" shall include the word "affirmed;" and when, by an Act of Parliament or by a rule of the Senate or House of Commons, or by an order, regulation or commission made or issued by the Governor in Council, under any law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, take or administered, such oath may be administered and a certificate of its having been made, take or administered may be given, by any one named in any such Act, rule, order, regulation or commission, or by a judge of any court, a notary public, a Justice of the Peace, or a Commission for taking affidavits having authority or jurisdiction, within the place where the oath is administered, and the wilful making of any false statement in any such oath or affirmation shall be wilful and corrupt perjury.

"Thirty fifth.—Where any oath is repealed wholly or in part, and other provisions are substituted, all officers, persons, bodies politic

(1) Decision of Queen's Bench CONTRA (afterwards overruled) 5 L. N., 397 & 26 L. C. J. 331.

or corporation, acting under the old law, shall continue to act as if appointed under the new law, until others are appointed in their stead and all proceedings taken under the old law, shall be taken up and continued under the new law, when not inconsistent therewith, and all penalties and forfeitures may be recovered and all proceedings had in relation to matters which have happened before the repeal, in the same manner as if the law were still in force, pursuing the new provisions as far as they can be adapted to the old law. "Where any Act is repealed wholly or in part, and other provisions are substituted, all by-laws, orders, regulations, rules and ordinances, made under the repealed Act shall continue good and valid, so far as they are not inconsistent with the substituted Act, exactment or provision, until they are annulled or others made in their stead.

"And where any Act or part of an Act is repealed and other provisions are substituted by way of amendment; revision or consolidation, any reference in any unrepealed Act, or in any rule, order or regulation made there under to such repealed Act or enactment, shall as regards any subsequent transaction, matter or thing be held and construed to be a repeal of the provisions of the substituted Act or enactment relating to the same subject, matter as such repealed Act or enactment: Provided always, that where there is no provision in the substituted Act or enactment relating to the same subject, matter the repealed Act or enactment relating to the same subject matters, the repealed Act or enactment shall stand good and be real and construed as unrepealed, in so far but in so far only, as may be necessary to support, maintain or give effect to such unrepealed Act, rule, order or regulations." C. 46, Vic. Cap. I.

122. The preamble of a statute cannot control the enacting clauses. The Petitioner was convicted of having from eleven in the evening of Saturday the 13th Nov. 1880 until five on Monday a.m., neglected to keep and shut the bar of a certain restaurant then kept by her on St. Catherine Street, in the City of Montreal, contrary to the License Act 1878. She complained of this conviction on the ground that the Act in question had been repealed so far as concerned the offence in question by the Quebec 1879 42-43 Vic. Cap. 4, Sec 1. It was urged against the petition that the preamble to the statute of 1879 referred only to taverns, and thereby limited the scope of the Act so that it had no application to the case of the petitioner. *Per Curiam*. It is evident that the preamble of this Act does not refer to restaurants, but to taverns; but the enacting clause has no such limitation but refers to houses and buildings generally, in which liquor is sold. Is the enacting clause to be limited by the preamble? *Vide* Dwarries on Statutes 655. "The preamble to a statute usually contains the motives and inducements to the making of it: but it also has been held

to be no part of the statute." Conviction quashed. *Page Ex parte*. 4 L. N. 146. S. C., 1881.

#### IV. PROCEEDINGS AFFECTING — CONSTITUTIONALITY OF TO BE NOTIFIED TO ATTORNEY GENERAL.

1. No question as to the constitutionality of any act of the Province, or of the Federal Parliament, shall be raised before the Courts of original jurisdiction or of Appeal, unless the party raising the same, shows to the Court that he has, at least eight days before the day fixed for the hearing, given notice to the Attorney General of the question which he intends to raise, with sufficient information to enable him to understand the nature of his pretensions; upon such notice the Attorney General may intervene in the case on behalf of the Crown, and take issue, in writing, on such questions and the judgment of the Court, whether it grant or refuse his conclusions, shall mention such intervention and such conclusions, on which it shall render judgment, as if the Attorney General, were a party to this suit, and a copy of such judgment shall be forwarded without delay to the Attorney General. Q. 45 Vict. Cap 4. Sec 1.

#### V. PROCEEDINGS AGAINST.

123. The constitutionality of an Act of the Legislature may be attacked by a direct action, if the Act in question has been invoked in proceedings against the parties interested in having it declared unconstitutional. *North British & Mercantile Fire & Life Insurance Company & Lambe*, 5 L. N. 323, S. C. 1882.

#### VI. REPEAL OF.

1. The Quebec Interpretation Act (31 Vic., Chap. 7) is amended by adding the following section after section 11.

"11a. Whenever a statute, which repeals another, is itself repealed, the Statute repealed by it, does not come again in force unless the Legislature expresses such intention."

2. This Act shall not affect pending cases. Q. 31 Vic., Cap. 5.

#### VII. TEMPERANCE ACT OF 1864.

124. The Temperance Act of 1864 was continued in force after Confederation by the terms of Sec. 129 of the B. N. A. Act, and subsequently by the Temperance Act of 1878 (41 Vic., Cap. 6, Sec. 3.) *Noel & the Corporation of the County of Richmond*, 4 L. N., 124 Q. B., 1881.

### ADJUDICATAIRE.

#### I. LIABILITY OF, *see* SALE, JUDICIAL.

### ADMINISTRATION.

#### I. OF PROPERTY OF INSOLVENT, *see* INSOLVENCY.



II. OF PROPERTY OF MINOR, *see* MINORITY, TUTORSHIP, &c.

III. OF PROPERTY OF SUCCESSION, *see* EXECUTORS.

IV. OF TRUSTS, *see* TRUSTEES.

### ADMINISTRATORS.

I. LIABILITY OF, *see* EXECUTORS, TRUSTEES.

### ADMIRALTY.

I. JURISDICTION OF COURT OF, *see* MARITIME LAW.

### ADMISSIONS.

I. IN PLEADING, *See* PLEADING.

II. JUDICIAL CANNOT BE DIVIDED, *See* EVIDENCE ADMISSIONS.

III. WITHOUT DEPOSIT WILL CARRY COSTS AFTER PLEA FILED IF SUSTAINED *See* COSTS.

### ADULTERY.

I. OF WIFE DOES NOT DEPRIVE OF HER SHARE IN THE COMMUNITY, *see* MARRIAGE, SEPARATION, &c.

II. PROOF OF, *see* MARRIAGE SEPARATION DE CORPUS.

### ADULTERATION.

I. A GROUND OF INJUNCTION.

125. Action for an injunction and for an account and also in damages. The complaint set out an agreement of date 22nd February 1877, by which the plaintiff undertook to furnish to defendants his dry brilliant body green and also consented that his trade mark should be used by defendants for five years, on the labels for said green, after it was ground by the Company in pure refined linseed oil, and Plaintiff complained that the Company failed to furnish him with montly accounts; that the Company greatly adulterated the dry green furnished by plaintiff with divers inferior materials which took away the brilliancy of the green and impaired its coloring power, and more especially had used in such adulteration sulphate of barytes, and other inferior materials and sold and delivered large quantities of said inferior material, using the trade mark of plaintiff, &c. Conclusion that the Company be enjoined from using said trade mark upon any of said green so manufactured by the Company; that they

be condemned to furnish an account and to pay over &c. On the evidence, injunction granted as prayed for and general damages. *Martin et Dominion Oil Cloth Company*, 4 L. N. 237. S. C. 1881.

### ADULTERATION OF FOOD

I. ACT RESPECTING C. 48-49 VICT. CAP. 67.

II. ACT RESPECTING AMENDED. C. 47 VICT. CAP. 34.

### ADVERTISEMENTS.

SUMMONS BY, *see* PROCEDURE.

### ADVICE.

I. RIGHT TO REMUNERATION FOR WHEN GIVEN CASUALLY BY A LAWYER, *see* ADVOCATES FEES OF.

### "ADVISABLE" AND "NECESSARY"

I. NOT MATERIALLY DIFFERENT, *see* MUNICIPAL CORPORATION POWERS OF.

### ADVOCATES

I. FEES OF.

II. LIABILITY OF.

III. REMUNERATION OF.

IV. RIGHTS AND DUTIES OF.

V. RIGHTS OF BETWEEN PARTNERS.

I. FEES OF.

126. Where a letter has been written by a lawyer in pursuance of instructions from a client, to a debtor of the latter, requesting payment of a debt, and the debtor settles the claim, the sum of \$1.50 may be claimed by the lawyer from the debtor, as the fee for such letter, and he may sue therefor in the name of his client. *Michaels & Plimsoll*, 6 L. N., 61 & 27 C. J., 29, & *Lennox & Thorn*, 6 L. N., 8, C. C. 1883.

127. An action for professional fees and disbursements is not an action founded upon detailed account within the meaning of Art, 91 C. C. P. *Langlois & St. Pierre*, 9 Q, L. R., 95 S. C. R., 1883.

128. Action for three dollars for professional advice. The defendant when examined in Court admitted the advice, that it was given in answer to questions asked by him, and he did not dispute the charge for the services rendered, but rested his defence on the contention that the consultation in question having taken place in the course of a casual

conversation on board of a railroad car on which he and one of the plaintiffs were passengers, there was no right of action. It was elicited that the defendant was at the time actually on his way to Montreal to obtain advice on the point concerning which he consulted the plaintiff. *Cooke & Penfold*, 7 L. N., 176 C. C., 1884.

129. Dans l'espèce, le coût de la lettre d'avocat n'est pas exigible et ne peut être recouvré en justice du débiteur à qui elle a été écrite pour lui demander le paiement de sa dette. *Ouimet & Gravel*, 7 L. N. 383. C. C., 1884.

#### II. LIABILITY OF.

130. No action lies against an advocate for words spoken by him in the discharge of his professional duty before the Court, unless the words complained of are foreign to the case in which he is at the time engaged. *Gauthier & St. Pierre*, 7 L. N. 44. S. C. 1884.

#### III. REMUNERATION OF.

131. On a Petition of Right it was shown that the government of Canada acting through the Minister of Marine and Fisheries under the Treaty of Washington and the Canadian Act 35 Vic. Cap. 25, by which the same was made part of the law of Canada, entered into an agreement with suppliant, a Queen's Counsel residing in Montreal, to act as counsel before the Commission sitting at Halifax on the following terms: that the suppliant was to receive \$1,000 per month on account of his expenses at services whilst the Commission was sitting at Halifax, and that a further sum, to be settled upon after the award of the Commissioners, would be paid. The suppliant removed with his family from Montreal to Halifax and was exclusively engaged in connection with this matter for 240 days. The government paid him \$8,000 and by his petition he claimed that the amount he received only paid his expenses, and that he was entitled to a further sum of \$10,000 for the value of his services. The amount involved before the Commission was \$12,000,000, and the amount awarded in favor of Canada was \$5,500,000. *Held* that as the evidence adduced proved that the remuneration received by the suppliant when engaged as counsel in important cases was \$50 per day, and \$20 for expenses, when his services were required outside of his own Province, the Court would grant him \$8,000 out of the \$10,000 claimed by his petition, being at the rate of \$50 *per diem* and \$20 for expenses for the 240 days he was employed before the Commission. *Doutre & The Queen*, 4 L. N. 34, Ex. Ct. 1881.

132. And on appeal to the Privy Council, *Held* that an advocate of the Province of Quebec being by law and the custom of his profession entitled to recover payment for his professional work, those who engage his services must, in the absence of any stipulation to the contrary, express or implied, be held to have employed him

upon the usual terms according to which such services are rendered. The contract is not dependent upon the law of the place where the services are to be given, but upon the status of the person employed. *Regina & Doutre*, 7 L. N. 242 & 28 L. C. J. 209. P. C. 1884.

#### IV RIGHTS AND DUTIES OF

133. In an action by a lawyer for fees and disbursements.—*Held* that to deprive an advocate of his fees it is necessary to prove that he has acted with fraud or with gross ignorance of the duties of his profession, and where the law permits to take an action before either the Superior Court or the Circuit Court, the advocate cannot be deprived of his fees because, without instruction to the contrary, he took it before the Superior Court. *Davidson & Laurier*. 1 Q. B. R. 366 Q. B. 1881.

#### V RIGHTS OF BETWEEN PARTNERS

134. The plaintiff a former partner with D. D., as advocates under a firm name, claimed from defendant after the dissolution of the partnership, the sum of \$1929, half of a debt due by the defendant according to a bill of costs duly taxed to the partnership. The defendant pleaded that even, if the facts alleged were true, which he denied, that the action should have been taken in the name of the firm; that he had to do only with the other partner to whom alone he had given instructions to act for him; that he had had nothing to do with the plaintiff, and that if his name had appeared in the proceedings it was without the knowledge of the defendant, and that it was understood between the other partner and him, the defendant, that any fees that might be due for his services would be set off against defendants account with the other partner for merchandise. The plaintiff proved the existence and dissolution of the partnership and the Court maintained the action. *D'Amour & Bertrand*. 26 L. C. J. 136. C. C. 1882.

### AFFIDAVITS.

#### I. EXCEPTION TO.

#### II. JURAT.

#### III. WITH OPPOSITION, *see* OPPOSITION.

#### IV. WITH PLEA, *see* BILLS AND NOTES.

#### I. EXCEPTION TO.

135. On an exception to the form of an opposition *Held* that the words "Com. Cour Sup. Quebec," were under the circumstances sufficient to describe the quality of the person before whom the affidavit was taken. *Lau-niere & Lebel*, 9 Q. L. R. 337. S. C. 1883.

136. But an affidavit bearing date several months before the opposition is null. *Id.*

#### II. JURAT.

137. In the jurat of an affidavit the quality of the person receiving it is sufficiently indi-

cated by terms which enables the Court to recognize its officers. *Montgomery and Lyster*, 8 Q. L. R. 375. S. C. R. 1882.

## AFFREIGHTMENT

- I. ACTION FOR FREIGHT
- II. BILLS OF LADING
- III. CHARTER PARTY
- IV. DEMURRAGE
- V. LIABILITY OF FREIGHTER
- VI. LIABILITY OF MASTER OF THE VESSEL.

### I. ACTION FOR FREIGHT.

138. In an action for freight *Held* that the Captain had a right to recover freight for the cargo delivered, although part of the goods may have been damaged in unloading, and the consignee has a right to his recourse by plea or cross demand *Halcrow & Lemesurier*. 10 Q. L. R. 239 Q. B. 1884.

### II. BILL OF LADING.

139. The plaintiff alleged that on the 8th of August 1880, one R placed on board the schooner *Falmouth* a cargo of 16,500 bushels of wheat to be transported to Portsmouth near Kingston, Ontario, and to be there delivered to the care of the Company, defendant, and to be from there carried by them to Montreal, and to be delivered to the order of the shippers, with instructions to give notice of the despatch to C. & B., of Montreal, and of its arrival there. On the bill of lading, of which the master of the schooner signed an original, and a copy, was the address at which the wheat was to be delivered as follows: "Order Reynolds Bros, notify Crane & Baird, Montreal, P. Q., care St. Lawrence & Chicago Forwarding Company, at Portsmouth Harbor, near Kingston, Lake Ontario." *Held* that the goods having been carried by schooner from a port in the United States to Kingston, Ontario, under a bill of lading requiring their delivery there to the defendants subject to the order of the shippers, and having been accepted by the schooner and a receipt there for given on a duplicate of the bill of lading, and forwarded by the defendants to Montreal, and there delivered without the order of the shippers, and without the surrender or presentation even of the bill of lading bearing the endorsement of the shippers, the defendants were liable to the plaintiff the holder of the bill of lading, for the value of the portion of the goods mentioned in the bill of lading which were assigned to the Plaintiff. *Molsons Bank & the St. Lawrence & Chicago Forwarding Company*, 25 L. C. J., 324 & 5 L. N. 6, S. C., 1881.

140. And the assignment of a portion of the goods mentioned in a bill of lading is valid and especially so when the assignee holds and offers the bill of lading endorsed by the shippers to surrender it. *Ibid*.

141. But held in appeal, reversing this decision, that the bill of lading was fulfilled, and became effete by the delivery of the wheat at

Kingston, prior to the assignment of the bill of lading to respondents (1). *Ibid* 7 L. N., 367 & 28 L. C. J. 127, Q. B., 1884.

### III. CHARTER PARTY

142. Action for what is known as "dead freight," turning on the following clause in a charter party, between the opening of navigation 1879 and thereafter to run regularly and with all despatch between Montreal and London and to be despatched from Montreal in regular rotation with other steamers under charter to the same charterers, up to the first October, 1879. *Held* that what the parties intended was that as there was to be a succession of cargoes the ships should arrive at convenient times. Therefore no proof of injury. *Henderson & McShane*, 5 L. N. 196, S. C. 1882, & *Hall & McShane*, 6 L. N. 195, & 27 L. C. J. 187. S. C., 1883.

143. Held over ruling the above that there was not a substantial compliance on the part of the ship, and that the appellant was entitled to throw up the charter party (2). *McShane & Henderson*. M. L. R. I. Q. B. 264, 1884, & *McShane & Ball*; & *McShane & Milburn*, M. L. R. 2, Q. B. 42, 1885.

### IV. DEMURRAGE.

144. A charter party was entered into by which a steamer was to take on board a cargo of coal, at the port of Sydney, Cape Breton. In the charter party was this stipulation: "Taking her turn with other steamers, and taking precedence of sailing vessels, and receiving prompt despatch, in loading and unloading." Sydney is a coaling port, and the coal is brought straight from the pit to the vessels loading. There were a number of vessels waiting to load, and the steamer did not get her cargo until seventeen days after the captain protested the freighters. *Held* (reversing the judgment of the Q. B.) 5 L. N. 124 and 2 Q. L. R., 337, that want of diligence on the part of the lessees defendants, was established, the delay which occurred in loading the vessel being caused by the deficiency of coals at the port, and not by the necessity of taking turn according to the custom of the port. *Lord & Elliott*, 27 L. C. J. 30, & 6 L. N., 146 P. C., 1883.

145. But in a similar case, the plaintiff's action was dismissed in the Queen's Bench, the Court saying: Probably in this case the same question could not arise, for the charter-party contains a stipulation not to be found in the other, namely: That the "Tagus" should load in the usual manner with a full and complete cargo of coals, which was to be brought alongside, as is customary at ports of loading and discharge. There is also no evidence to establish that the facilities of the pier were greater than the production of the mine or that there was any lack of coal at the pier. *Lord & Dunkerly*, 7 L. N. 102 Q. B. 1884.

- (1) In Supreme Court.
- (2) In Supreme Court.

## V. LIABILITY OF FREIGHTER

146. The freighter who does not load the vessel to its full capacity as agreed upon must nevertheless pay for the entire freight of the vessel according to Art. 2449 C. C., (1) and will also be liable for damages should any occur in consequence. *Lomer and Coz*, 11. R. L. 339 S. C., 1881.

## VI LIABILITY OF MASTER OF VESSEL.

147. Persons engaging a vessel under a charter party in which they reserve themselves the right to employ a stevedore for the loading of the vessel have no recourse against the Master or Captain for damages incurred during the voyage and caused by bad loading or absence of ballast, *Bozzo and Moffatt*, 11 R. L. 41. S. C., 1881.

148. And remark made by the Captain of the vessel to the Stevedore, who asked for more ballast to put in the vessel, to the effect that he needn't bother himself, that the vessel was staunch and that he could go on with his loading does not infer any responsibility on the part of the Captain with respect to the loading and ballast of the vessel if the Stevedores were themselves satisfied with his answer and continued the loading. *Ibid*.

149. The fact that the Captain has signed the bill of lading, acknowledging that the goods were received in good order, will not prevent him from shewing that the goods were damaged by the persons employed in loading. *Ibid*.

## AGENCY.

## I. ACTION BY AGENT.

## II. BROKERS.

## III. IN ELECTIONS See ELECTIONS LAW.

## IV. LIABILITY OF AGENT.

## V. LIABILITY OF BROKER FOR MONEY DEPOSITED IN MARGIN—See GAMBLING TRANSACTIONS.

## VI. LIABILITY OF PRINCIPAL.

## VII. OF CONTRACTORS.

## VIII. OF FACTORS.

## IX. POWERS OF AGENT.

## X. PRINCIPALS ARE NOT AFFECTED BY PRIVATE KNOWLEDGE OF AGENT. See BANKS.

## XI. PROOF OF.

## XII. SUB AGENT.

## XIII. WHAT CONSTITUTES.

## XIV. WHO ARE AGENTS.

(1) Freight is due upon the goods which the master has of necessity, sold to repair the ship, or to supply it with provisions and other urgent necessities and he is obliged to pay for such goods, the price which they would have brought at the place of destination. This rule applies equally, although the ship be afterwards lost on the voyage, but in that case the price is that at which the goods were actually sold. 2449 C. C.

## I. ACTION BY AGENT.

150. Action on a deed purporting to be a deed of sale from the manufacturing firm of the Babcock Manufacturing Company, acting by its agent H. B. to the Municipal Council of the incorporated village of L'Assomption acting by Moise Chevalier, one of the Councillors, of a Babcock fire engine. Plea *inter alia* that the deed was between the Municipal Council and the Babcock Manufacturing Company, and consequently that the plaintiff had no interest to bring the action. *Held* that H. B. had a right to declare on the contract as having been conveyed to him, not as a factor, but as owner (1). *Corporation of L'Assomption & Baker*, 4 L. N., 370 Q. B., 1881.

## II. BROKERS.

151. The plaintiff, a broker, claimed from defendant \$285 as commission on the sale of 10,000 bushels of wheat deliverable at a certain future date, at a certain price, and that at the date fixed grain had risen and he found himself in a position to lose the amount he had advanced in behalf of the defendant viz: the amount sued for. The defendant pleaded that the agreement was illegal and immoral, inasmuch as the sale never contemplated delivery but merely the payment of the difference in price at the date of delivery, and was therefore a gambling transaction, and plaintiff could recover nothing for his advances or commission. *Shaw & Carter*, 26 L. C.J., 151 S. C., 1876.

## IV. LIABILITY OF AGENT.

152. Action by a livery stable keeper for \$273 amount of an account for hire of horse and buggy. The debt was incurred by one M. and the question was as to the personal responsibility of the two defendants, who were trustees of the Protestant Union Church and school house at Cote St. Luc for whom M. was acting. The demand was based chiefly on the following letter written by the defendants to the plaintiff: "Montreal, July 27, 1878. By a motion passed at a meeting of the trustees of the Protestant Union Church and school house, at Cote St. Luc, it was proposed by XX (one of the defendants) and seconded by XX (the other defendant) that M. W. is hereby instructed to open an account with M. S. (the plaintiff) for hire of horse and buggy. Mr. S. being requested to

(1) This case is given here in the language of the report as nearly as possible, about which there is something incomplete and unsatisfactory. The judgment guards against the pretension that plaintiff could have sued as agent or factor, which would have been in violation of *DOUTRE & DANGEREUX* (II Dig. 45-213) but hints that the right of action was conveyed to him, though in what manner is not stated. *Ed*.

"include the account already incurred by M. in that against the trustees. In the face of that resolution we hereby request you will supply Mr. M. with a suitable horse and buggy at the rate already agreed upon, the payment of your account being made by the trustees about the middle of September next when the collection of the subscriptions will be made." The letter was signed by the defendants without any addition to their names. The defendant pleaded they were not personally responsible, but one of them offered \$60, in settlement. *Held* that they were not personally responsible and even if they were it could only be each for his share and the \$60 was sufficient. *Starr & McDonald*, 4 L. N., 301 S. C., 1881.

153. The plaintiff sued the defendants for the sum of \$62.97, balance due on the purchase of a certain quantity of hay. The defendants pleaded that at that time they were employed by one J. D. a trader of Berthier, and that it was for him they purchased the hay and not for themselves. The only witness examined besides the defendant, who testified the one for the other was the daughter of the plaintiff who swore positively that the defendant made no mention of any other person through whom they were acting, but bought the hay entirely in their own name. *Held* that an agent or factor of an unknown principal was responsible personally for the price of the things purchased, and where the principal is a foreigner and the defendant acts only as a sub-agent the same rule holds though he declares the name of the principal agent at the time of the purchase. *Lemire & Dixon*, 11 R. L. 323, C. C. 1882.

154. This was an action of damages brought under the following circumstances: The plaintiff in March, 1882, bought a piece of land from La Fabrique of St. Constant, and shortly after began to build upon it. A large number of the parishioners thereupon protested against the Fabrique, the curé and the plaintiff, in order to have the building operations stopped and the building demolished. The plaintiff continued to build, and an action was instituted to set aside the deed and have the building demolished. Judgment was rendered declaring the deed of sale null, and ordering the demolition of the building. Thereupon the plaintiff brought an action for \$2,000 against the curé.—*Per curiam*. The question is whether a mandatory is responsible for the acts committed by him under his mandate. The plaintiff alleges that the curé is personally responsible for his acts. I do not find that he is personally responsible. The price of the land was fixed by the Fabrique, and when the deed of sale was executed the resolution authorizing the sale was set out in the deed. The mandatory who discloses his mandators does not bind himself personally, but only his mandator, so long as he does not exceed the powers entrusted to him. B. sold for the Fabrique. The purchaser had full knowledge of the power. under

which he acted. The deed of sale was submitted to the bishop and he approved of it under a condition that it should be submitted to an approval by the parishioners. It was submitted to them and a resolution was adopted, but the resolution was null so that it was not in reality sanctioned, and the deed was set aside because the resolution was null. Under the circumstances I find the Fabrique had no right to sell. If the sale is not legal it is an error de droit for which the defendant is not responsible. The other point is whether the defendant, the curé, is not responsible for the act of the Fabrique. On this point there is considerable proof, but it is evident that this proof is not positive, and under the circumstances I consider that the plaintiff has not made out his case against the defendant, and therefore the action is dismissed. *Goyette & Bédard*, S. C. 1884.

#### V. LIABILITY OF BROKER FOR MONEY DEPOSITED ON MARGIN.

155. A customer deposited money with broker to be used as "margin" in buying stock for speculative purposes. No delivery of the stock so purchased was intended, the broker's intentions being to realise as soon as a small profit could be made. In consequence of a decline in value and the margin being thereby exhausted, the broker at one time sold stock at a loss. *Held* that no action would lie against the broker under such circumstances, the contract being a gaming one. *Fenwick & Ansell*, 5, L. N. 290, S. C. 1882. *Allison & MacDougall*, 27 L. C. J. 335, & 6 L. N., 93, S. C., 1883.

#### VI. LIABILITY OF PRINCIPAL.

156. Where action was taken against the members of a partnership, for damages for false arrest, at the instance of one of them. *Held* that they were all liable. *Cowan & Osborne*, 12 R. L. 29, S. C. 1881.

157. On an action to set aside a sale induced by fraudulent representations as to the value of certain shares of stock transferred as part of the price. *Held* that where an agent in making a contract suppressed a material fact within his knowledge, his principal cannot profit by the fraud, although he was himself ignorant of the fact suppressed. *Chrétien & Crowley*, 5 L. N. 268, & 2 Q. B. R. 385, Q. B. 1882.

158. Fraud committed by the agent affects the principal. *Lighthall vs. Chrétien*. 11 R. L. 402, S. C. 1882.

159. During the plaintiff's absence from Montreal, his bookkeeper and principal clerk signed in his behalf an agreement of composition with a debtor and, in pursuance thereof, collected from the assignee the dividend realized from the estate. The plaintiff was informed by his clerk by letter of what he had done and did not object at the time, but on his return to Montreal in the following month,

he claimed the whole debt from the debtor, crediting the dividend as a payment on account. Held that under the circumstances there was a ratification of the clerk's act. *Neild & Vineberg*, 5, L. N. 118. S. C. 1882.

#### VII. OF CONTRACTORS.

160. The plaintiff, a workman was engaged by contractors for the construction of a railway. The railway Company acted as bankers for the contractors and paid the wages of the workmen, cost of transport to the place where they were to work, &c. Held that the company were the real principals and they had given the plaintiff reasonable cause for believing that the contractors were their agents, and therefore the company were liable for a breach of the contract. *La-pointe & the Canadian Pacific R'y Co.* 7 L. N. 29. C. C., 1883.

#### VIII. OF FACTORS.

161. In an action arising out of a commission to purchase hay Held that le facteur ou agent d'un principal résidant en pays étranger est seul responsable, personnellement envers les tiers. *Dixon & Etu*, 7 L. N., 213 Q. B., 1884.

#### IX. POWERS OF AGENT.

162. The general power of attorney to manage and minister the personal property of the mandator does not authorize the agent to go security for third persons, and to endorse notes so as to bind the principal, in matters foreign to the administration with which the agent has been entrusted. *Poirier & Jobin*, 12 R. L., 64 S. C., 1881.

#### XI. PROOF OF.

163. In an action against a wife on a contract of insurance signed for her by her husband she pleaded want of authority in her husband to sign. Held that her acceptance was sufficient proof of such authority. *Mutual Insurance Company & Desrousselles*, 5 L. N., 179 S. C., 1882.

164. As to what constitutes proof of agency sufficient to authorize the institution of an action on behalf of another. See *Davidson & Laurier*, 1 Q. B. R. 366, Q. B., 1885.

#### XII. SUB AGENT.

165. In an action arising out of an order to buy hay. Held que les personnes employées par ce facteur ou agent, qui est leur mandant, ne sont pas responsables, personnellement, des transactions faites au nom de leur mandant. *Dixon & Etu*, 7 L. N. 213 Q. B., 1884.

#### XIII. WHAT CONSTITUTES.

166. Plaintiff attached a quantity of goods

in the Custom House in satisfaction of a judgment against defendant who carried on business as "J. H. W. & Co." Intervnants claimed the goods seized as their property alleging that defendant was merely their agent in carrying on the business, and in support filed a deed *sous seing privé* of which it was agreed that the intervenants should establish a store under the name of J. H. W. & Co., to be managed by defendant as their agent; that they were to supply him with all goods required and charge the store with all goods imported and with a commission of five per cent, for buying; that defendant was to carry on for the benefit of intervenants and was not to make purchases. All this intervenants alleged was carried into effect and the goods seized were purchased for the business by them; that the plaintiff's claim was incurred long previous to the agreement and was unconnected with the business in question. On proof intervention maintained and seizure discharged. *Greene & Wilkins*, 4 L. N., 186 S. C., 1881.

#### XIV. WHO ARE AGENTS.

167. The plaintiffs were trustees under a deed of assignment from insolvents, with authority to carry on the business until it should be wound up, which was to be completed within two or three years. The business was not wound up in that time, but was carried on by the plaintiffs on an extensive scale with funds raised on their own credit, and large losses were incurred. Held, by the majority of the Court, in an action by the plaintiffs against creditors who had signed the trust deed, to oblige them to repay the amount of such losses, that the plaintiffs were not under the circumstances, agents of the creditors, so as to make the latter liable for the result of their operations. *Chinic & Garneau*, 7 L. N., 210 Q. B., 1884.

### AGGRAVATED ASSAULT — See CRIMINAL LAW.

### AGGRAVATION.

#### I. OF LIBEL IN PLEADING, see LIBEL.

### AGREEMENT—See CONTRACTS.

#### I. FRAUDULENT, see FRAUD.

### AGRICULTURE—DEPARTMENT OF.—See Q. 48 VICT., CAP. 7.

## AGRICULTURAL FERTILIZERS.

I. ACT TO PREVENT FRAUD IN THE MAKING AND SKILLING OF. C. 47 Vict., Cap. 37.

II. ADULTERATION OF, ACT RESPECTING. C. 48-49 Vict., Cap. 58. C. 48-49 Vict., Cap. 67.

## AGRICULTURAL SOCIETIES.

I. ACT AMENDING, *see* Q. 46 Vic., Cap. 12.

II. BY-LAWS WITH REGARDS TO.

III. SUBSCRIPTION TO.

II. BY LAWS WITH REGARD TO.

168. On a petition to set aside certain resolutions and by laws of a County Council. *Held* that the declaration prescribed by 32 Vict. c. 15, S. 41. (1) with reference to the organisation of agricultural societies, is only required for the formation of the Society. The signature of forty persons at the date of formation is sufficient to give the society a legal existence, and it is not necessary that persons becoming members subsequently should sign the declaration. *Martin & Corporation d'Argenteuil*, 7 L. N., 139 C. C. 1884.

169. The choice of a place for exhibitions of an Agricultural Society, within the meaning of 37 Vict. c. 5, s. 2, does not imply that the particular site for the permanent buildings must be determined at the meeting of members; e. g., a resolution choosing "Lachute, in the parish of St. Jérusalem d'Argenteuil," is sufficient. *Ibid*.

170. It is not necessary that the resolutions and by laws passed at a meeting of a municipal council should be written out at length and signed by the presiding officer at the time of the meeting. *Ibid*.

171. A by-law of a county council, fixing a permanent place at which all exhibitions of an agricultural society shall be held is not a by-law within the meaning of articles 100 and 698 of the Municipal Code. *Ibid*.

## ALDERMEN.

I. ELECTION OF, *see* MUNICIPAL CORPS.

(1) Any procès-verbal, roll, resolution or other order of a municipal Council, may be set aside by the magistrate's Court or by the Circuit Court of the County or District, by reason of its illegality, to the same effect as a Municipal by-law, and is subject to the provisions of articles 461 and 705. Any municipal elector in his own name, may by a petition presented to the magistrate's Court or to the Circuit Court of the County or District, demand and obtain, on the ground of illegality, the annulment of any municipal by-law, with costs against the Corporation.

ALIAS WRIT—*See* PROCEDURE.

## ALIENATIONS.

I. OF PROPERTY IN FRAUD OF CREDITORS, *see* DONATION, SALE, TRANSFER.

II. PROHIBITION TO ALIENATE, *see* DONATION, SALE, &c.

ALIENS—*See* FOREIGNERS.

I. NATURALIZATION OF, *see* NATURALIZATION.

## ALIMENTARY ALLOWANCE.

I. IN CASE OF IMPRISONMENT, *see* IMPRISONMENT.

## ALIMENTS.

I. ACTION AGAINST CHILDREN.

II. EXEMPTION OF.

III. LIABILITY OF GRANDCHILDREN.

IV. RIGHT TO.

V. WIVES RIGHT TO.

I. ACTION AGAINST CHILDREN.

172. Action by a father against two of his children for an alimentary allowance. The children pleaded in *forma pauperis*, and severed in their defence. *Per curiam*. The plaintiff has established a right of action, but the difficulty is the extreme poverty of the defendants. The children offer to board the father at their own table; but the case is complicated by the fact that the father now has his third wife, and what is to be done with the stepmother or second stepmother? The case is somewhat of a puzzle. I doubt whether the Court has power to order the father to go and live with the children, but even if the Court does possess this power, I am not disposed to think it should be exercised under the circumstances of this case. The plaintiff's demand is moderate, being only for six dollars per month. The Court will order one of the children to pay 75 cents per week, and the other 50 cents per week. *Labranche & Labranche*, 6 L. N., 60 S. C., 1882.

173. In a similar case the Court ordered one child to pay fifty cents and three others forty cents each. No costs. *Lafon & Lafon*, 6 L. N., 84 S. C., 1883.

174. When the children are poor and they offer to lodge and take care of their parents, the Court will not oblige them to pay them an alimentary pension in money, even though the parent to whom they were bound, married, a second time. *Bachand & Bachand*, 12 R. L. 38 & 28 L. C. J., 155 Q. B. 1881.

## II. EXEMPTION OF

175. Notwithstanding a clause exempting from seizure the property bequeathed by a will, the property will be liable to be sold for obligations incurred in the administration and maintenance of the property itself. *Saunders & Voisard*, 28 L. C. J. 266 S. C. 1878.

176. The defendant petitioned to set aside an attachment issued against him on the ground that the things seized were under his father's will *insaisissable*. Plaintiff answered that the things were not exempt, inasmuch as the claim was for provisions sold to the defendant for the subsistence of himself and family. *Held* as the claim generally was for alimments that the seizure must be maintained under the last paragraph of Art. 558 C. C. P. (1), and petition rejected. *Deland & Desrivieres*, 4 L. N., 40 S. C., 1881.

177. In execution of a judgment obtained by respondent against appellant the dividend there might be on certain bank stock was seized and also the rents due on a certain house the property of appellant. The seizure was contested by appellant on the ground that the house, the rents of which were seized, and also the bank stock formed part of the property he received from his father's estate under the will of his father, by which the property bequeathed was not only substituted, but was declared *insaisissable*, both as to the capital and as to the interest and revenues thereof. A part of the property had been sold by the executors to one of the heirs. *Held* that the effect was to make a partition and the revenues of said property were unseizable. *Molson & Carter*, 6 L. N., 372 Q. B., 1883.

## III. LIABILITY OF GRANDCHILDREN.

178. Where there are children, and grandchildren, issue of a deceased child, the grandchildren are liable with the children, for the maintenance of the grand parents, even though the children have means of supplying the alimments by themselves. *Reeve & Monjeau*, 5 L. N., 373 S. C., 1882.

## IV. RIGHT TO.

(1) The following are also exempt from seizure : Alimentary allowances granted by a court. Sums of money given or bequeathed on condition of their being exempt from seizure. Sums of money or pension given as aliment, even though the donor or testator has not expressly declared that they should be exempt from seizure. Alimentary allowances and things given as alimentary may however be seized and sold for alimentary debts.

179. *Held* (reversing the decision of the Superior Court, 6 L. N. 133,) where a claim was made by a natural son aged 25, against the curator of his mother, an unmarried woman, and an interdict, for an alimentary allowance, and it appeared that the mother was possessed of means more than sufficient for her maintenance, that the son was entitled to a reasonable allowance, especially in view of the fact that such allowance might be paid without trenching on the principal of his mother's fortune, or interfering with the rights of the plaintiff's minor children. *Francis & Clement*, 6 L. N., 194 S. C. R., 1883.

180. A person who has come of age and who does not show that he is unable, by reason of infirmity or other sufficient cause, to earn his own subsistence, has no right to an alimentary allowance from his parents, whatever the means of the latter may be. *Francis & Clement*, 6 L. N., 133 S. C. R., 1883.

## V WIFE'S RIGHT TO.

181. Where the husband withdrew himself from his joint residence with his wife, and notwithstanding her willingness to continue to reside with him, according to his means and conditions refused to provide her with a fit and proper residence and with support and maintenance according to his proved means and condition. *Held*, reversing S. C. R. (1. Dig. 75, 543,) that he had failed and neglected to perform the marital obligations and duties imposed upon him by law, and that the wife was entitled to receive from him an alimentary allowance according to his means, and that without being compelled to proceed against her husband *en separation de biens* although the circumstances might justify such proceedings. *Conlan & Clarke*, 25 L. C. J. 90, Q. B. 1872.

## ALLOWANCE.

I. TO DEFENDANT UNDER CONTRAINTE PAR CORPS, *see* ALIMENTS.

## ALTERATION.

I. OF BILLS AND NOTES, *see* BILLS OF EXCHANGE.

## AMALGAMATION.

I. OF TWO BANKS DISCHARGES SURETIES TO ONE OF THEM PRIOR TO AMALGAMATION, *see* SURETYSHIP.

## AMARRAGE.

I. DROIT D', *see* HARBOR DUES.



AMIALE COMPOSITEURS—*See* AR-  
BITRATION.

AMENDMENT.

I. OF PROCEDURE, *see* PROCEDURE.

ANATOMY.

I. ACT RESPECTING THE STUDY OF, *see* Q, 46  
Vic., Cap. 30.

ANIMALS.

I. ACT RESPECTING INFECTIOUS OR CONTAGIOUS  
DISEASES AFFECTING, *see* C. 48-49 Vic., Cap. 70.

ANSWER—*See* PLEADING.

APPEAL.

- I. COSTS OF FACTUMS.
- II. DELAYS TO.
- III. DE PLANO.
- IV. EFFECT OF.
- V. EFFECT OF TO SUSPEND EXECUTION FOR  
Costs, *see* COSTS.
- VI. ENQUETE DURING.
- VII. EVIDENCE IN.
- VIII. EXHIBITS IN.
- IX. FROM CIRCUIT COURT.
- X. FROM JUDGE IN CHAMBERS.
- XI. FROM JUDGMENT INTERLOCUTORY.
- XII. FROM MOTIONS.
- XIII. FROM MUNICIPAL COUNCIL.
- XIV. GROUNDS OF.
- XV. IN ACTIONS TO ANNUL LETTERS PATENT.
- XVI. IN FORMA PAUPERIS.
- XVII. IN MUNICIPAL MATTERS.
- XVIII. INTERVENTION IN.
- XIX. JURISDICTION OF COURT OF.
- XX. ON MATTERS OF FACT.
- XXI. PENALTY FOR DESERTION OF.
- XXII. POWER OF COURT OF.
- XXIII. PROCEDURE IN.
- XXIV. QUESTIONS OF QUANTUM IN.
- XXV. RIGHT OF.
- XXVI. SECURITY IN.
- XXVII. SERVICE OF WRIT OF.
- XXVIII. SIGNATURE OF WRIT.
- XXIX. SURETIES IN.
- XXX. SUSPENDS EXECUTION.
- XXXI. TERMS OF COURT.
- XXXII. TO PRIVY COUNCIL.
- XXXIII. TO SUPREME COURT.
- XXXIV. WILL NOT BE ALLOWED.

I. COSTS OF FACTUMS.

182. The rate of two dollars per page allowed by usage for the cost of printing factums in appeal will not be reduced, though it be shown that the actual disbursement was less than that sum. *Dorion & Dorion*, 7 L. N., 90 Q. B., 1884.

II. DELAY TO.

183. Appellants took out a writ of appeal immediately after the judgment, and before the delay for inscribing in Review had expired. Respondent inscribed in Review within the delays and moved to dismiss the appeal on the ground that it had been taken within the delay for inscribing in Review. *Held* that the appeal was rightly taken and the respondent could only demand that proceedings be suspended until the proceedings in Review were disposed of. *Cassils & Fair*, 2 Q. B. R., 382 Q. B., 1882.

III. DE PLANO.

184. A judgment ordering a person to do a specific act as the delivering of certain promissory notes within a certain delay, or to pay a fixed amount, is a final judgment from which any appeal lies *de plano* and without leave of the Court. *Cassils & Fair*, 2 Q. B. R., 382, Q. B., 1882.

185. A judgment appointing a sequestrator is a final judgment and may be appealed from *de plano*. *McCracken & Logue*, 6 L. N., 326 Q. B., 1883.

IV. EFFECT OF.

186. When a defendant has obtained permission to appeal from an interlocutory judgment and does not avail himself of the permission, and does not give security within the delay required, he loses his right of appeal, without a judgment to that effect, and the plaintiff may succeed, without further formality. *Bruneau & McCaffrey*, 11 R. L., 253 Q. B., 1881.

V. EFFECT OF TO SUSPEND EXECUTION FOR COSTS.

187. While motion for leave to appeal from a judgment, maintaining a demurrer was pending, the successful party applied for execution for his costs which after argument was refused by the Prothonotary. *Payette & Hatton*, 5 L. N. 239, S. C. 1882.

VI. ENQUETE DURING.

188. The Court of Appeal may order an enquête when necessary, for the decision of circumstances which have arisen since the judgment giving rise to the appeal. *Hotte & Champagne*, 2 Q. B. R. 127, Q. B. 1880.

## VII. EVIDENCE IN.

189 Petition was filed, asking for the dismissal of the appeal on the ground of acquiescence. The petition was supported by affidavits which were met by counter affidavits on the part of the appellant. Application to cross examine the parties who made the affidavits allowed, and deponents ordered to appear for that purpose. *Hotte & Andegrove*, 25 L. C. J. 227, Q. B., 1880.

## VIII. EXHIBITS IN.

190 A party cannot file, in appeal, a document which was not filed in the Court below. *Dorion & Champagne*, 2 Q. B. R., 196, Q. B., 1881.

## IX. FROM CIRCUIT COURT.

191 An appeal lies to the Court of Queen's Bench on *points of law* from a judgment of the Circuit Court, when the sum or value of the thing demanded amounts to or exceeds \$100, although the evidence has not been taken down in writing (1). *Adam & Flanders* 25 L. C. J., 30, Q. B. 1878.

## X. FROM JUDGE IN CHAMBERS.

192 The Court of Queen's Bench sitting in appeal will grant leave to appeal from an order of a judge in chambers, where the judge is given the jurisdiction of the Court. *McCracken & Logue*, 6 L. N., 326, Q. B., 1883.

## XI. FROM JUDGMENT INTERLOCUTORY.

193 Every appeal from interlocutory judgments shall be inscribed by the Clerk of the Court, and heard by privilege, in a summary manner, without any reason of appeal or factums. Q. 41 Vic. Chap. 26, Sec. 6.

194 Application to reject an appeal on the ground that the judgment appealed from was only an interlocutory one and could not be so appealed without the permission of the Court, the appeal having been taken *de plano* and without such permission.

195 The judgment complained of was one appointing commissioners on a petition in expropriation presented to the Superior Court. *Held* not a final judgment and appeal dismissed. *Canadian Rubber Co. & City of Montreal*. 25 L. C. J. 231, Q. B. 1880.

196 Leave to appeal will be granted from an interlocutory judgment, on a motion dismissing a demurrer, and special plea filed by defendant. *Low & The Montreal Telegraph Co.*, 4 L. N. 381, Q. B. 1881.

197. In another case the action was for penalty under Sec. 149 of the Insolvent Act of 1869 by the assignee. The action alleged that appellant took a promise of payment from one L., an insolvent, whose assignee respondent was, as a consideration or inducement to consent to the discharge of such insolvent.

(1) 1142 C. C. P. par. 1.

Defendant pleaded to the form setting up that the assignee could not now bring such action. The exception to the form was rejected by the Court below. The defendant therefore asked leave to appeal. Court refused leave to appeal, as the point could be better decided on the merits. *Joseph & Murphy*, 4 L. N., 101 Q. B., 1881.

198. Motion for leave to appeal from interlocutory judgments on two motions. The first motion was by plaintiff to correct a clerical error, by effacing the words *de Circuit* and replacing them by the word *Supérieure*. The other motion also by plaintiff was to allow plaintiff to serve defendant with a duly certified copy of the writ, the copy served not being certified. Both these motions were accorded on payment of the costs incurred on the exception to the form previously filed by the defendant. The Court rejected the motion for leave to appeal with costs. *Therien & Wadleigh*, 4 L. N., 100 Q. B., 1881.

199. The plaintiff moved for leave to appeal from an interlocutory judgment which ordered *preuve avant faire droit* ou a *défense en droit*. The Court rejected the motion, but said that he would not lay down the rule that an appeal would under no circumstances be granted from such judgment. *Hochelaga Bank & Lavender*, 5 L. N., 378 Q. B., 1882.

200. Application for leave to appeal from an interlocutory judgment referring the case and the parties to the Roman Catholic Bishop of Montreal, in order that he might decide whether the marriage tie between appellant and her husband should be broken, and also from a previous judgment of 31st March 1880, dismissing her demurrer and that part of the conclusions which prayed that the present cause should be so sent to the Bishop for adjudication. Leave to appeal was granted. *Evans & Laramée*, 5 L. N., 134 Q. B., 1882.

201. In another case, the action was to set aside a donation by a father to his daughter and her future husband by marriage contract, as being in fraud of creditors. The husband, K, was sued to authorize his wife, and not in his own name. He appeared and pleaded with his wife. The case being inscribed on the merits, the judge discharged the *délibéré* in order that the husband should be called in personally, as he had an individual interest, and that time should be given to sell the real estate of the donor, then under seizure. — *Held* that the order to call in K was proper, but that the order to discuss the donor before giving judgment, or to refuse to give judgment until something was done which was not within the control of either of the parties, was irregular. Leave to appeal granted. *Tracey & Liggett*, 5 L. N., 135 Q. B., 1882.

202. Motion for leave to appeal from an interlocutory judgment, discharging the *délibéré* until it be decided whether an insolvent who has obtained a settlement with his creditors be discharged. The appellant sued the respondent

for *bornage*. When the case was ready for hearing, the respondent became insolvent, and proceedings were suspended. Subsequently the respondent obtained his discharge from his creditors, which was not confirmed by the Court. The appellant then continued his proceedings *en bornage* and obtained judgment with costs. He tried to recover his costs, but was met with the objection that the respondent was not responsible for this debt, having been insolvent and discharged. Leave to appeal refused. *McCannon & McKinnon*, 5 L. N., 142 Q. B.

## XII. FROM MOTIONS.

203. The plaintiff having moved in the Court below for delay to contest an account filed by defendant or to have it rejected obtained delay to contest it on the merits. They then moved to reject the account. The motion was rejected, and on motion for leave to appeal from the last judgment.—*Held* that the leave to appeal could not be granted, as plaintiff should have appealed from the judgment granting delay to contest the account as well as from the judgment rejecting their last motion. *Henderson & Henderson*, 1 Q. B. R., 304 Q. B., 1881.

## XIII. FROM MUNICIPAL COUNCIL.

204. On appeal from a judgment of a Municipal Council revising an assessment roll the appellants are not entitled to examine witnesses under Art. 1071 M. C. (1) *Dansereau & The Corporation of the Parish of St. Antoine*, 4 L. N., 299 C. C., 1881.

## XIV. GROUNDS OF.

205. A dilatory exception was filed, asking for security for costs. Security was given by the plaintiff, but no judgment was rendered on the exception. *Held*, that this omission not causing any injustice to the plaintiff, who did not complain in due time, was not ground for an appeal. *Bowen & Gordon*, 5 L. N., 300 Q. B., 1882.

## XV. IN ACTIONS TO ANNUL LETTERS PATENT.

206. Case of *Angers, Attorney General, & Murray*, (II Dig. 60-276), reported *in extenso* 25 L. C. J., 208 Q. B., 1880.

## XVI. IN FORMA PAUPERIS.

207. Motion for leave to appeal *in forma pauperis* from an interlocutory judgment maintaining a *réponse en droit*. Leave to appeal was granted, but no permission to proceed *in forma pauperis*. *Derome & Robitaille*, 4 L. N., 99 Q. B., 1881.

(1) The appeal is heard and decided in a summary manner, and no fresh witnesses can be heard unless the appeal is from the decision of a county council or board of delegates.

## XVII. IN MUNICIPAL MATTERS.

208. On appeal to the Queen's Bench. *Held*, confirming the judgment of the Circuit Court, that under Articles 100 and 698 of the Municipal Code, the Circuit Court had jurisdiction on an appeal from the County Council concerning a by-law of the Local Council, where the County Council commits an irregularity. *Corporation de St. Maurice & Dufréne*, 10 Q. L. R., 227 Q. B., 1884.

## XVIII. INTERVENTION IN.

209. When parties show sufficient legal interest in the subject matter of the appeal, they will be allowed to intervene and obtain an order of suspension of the case in appeal until judgment be rendered on proceedings instituted in the Court below by the petitioners. *Riddell & Evans & Hannan*, 27 L. C. J., 184 Q. B., 1883.

## XIX. JURISDICTION OF COURT OF.

210. The Court of Queen's Bench has no jurisdiction on an application for *habeas corpus* to correct an error in a warrant of commitment by the Superior Court. *Pollock Exp.*, 4 L. N., 293 & 2 Q. B. R., 60 Q. B., 1881.

## XX. ON MATTERS OF FACT.

211. Where the case turned entirely upon the evidence, the Court made the following remarks as to the functions of the Queen's Bench in appeal in such cases. *Per Curiam*. It is with great regret that we reverse a judgment on a matter of evidence. Usually we do not do so, when either view of the evidence may in our opinion be fairly maintained, even although we might incline to a view different from that taken. I desire particularly not to be misunderstood in saying this, for I am perfectly aware that the rule we follow has been subjected to some misconception in different quarters. We do not say that we look upon the decision of the Court below as we should on the finding of a verdict by a jury, for that would be a manifest error as to our law. On the contrary we are obliged to examine and appreciate the proof. But we do not readily reverse on mere appreciation of the evidence. It appears to me that however difficult it may be to express this rule, its application offers no practical difficulty. In this case, however, we have not to consider this rule. We have only to decide between two judgments, and we think that the judgment in the first instance was correct and should not have been touched. *Nicholson & Metras*, 4 L. N., 281 Q. B., 1881.

## XXI. PENALTY FOR DESERTION OF.

211. The only penalty which the failure to proceed on Appeal to Her Majesty in Privy Council for more than six months after secu-

rity has been given can entail, is the execution of the judgment appealed from. *Merchants' Bank of Canada & Whitfield*, 27 L. C. J., 183 Q. B., 1883.

#### XXII. POWER OF COURT OF TO CORRECT ERRORS IN JUDGMENTS.

213 The respondent asked that the record be sent back to the Court below, in order to have an error corrected in the copy of judgment, and that the necessary order be given to the Court below and to the Judge thereof, to cause the said error to be rectified. The draft of the judgment, as prepared by the Judge was correct, but in the registration a clerical error had been made, by which a wrong number was given in the description of certain land. The judgment as registered was not the judgment of the Court. *Per curiam*. There were English precedents which went a long way in permitting such errors to be rectified. But it was evident that the Courts here had no authority. This error must be corrected by the Court below. It was not necessary to send back the record. The Court below could correct the error in the registration, and when that was accomplished it was possible that a correct copy could be produced here and admitted in the place of that which contained the error in question. At present the motion must be rejected. *Sunberg & Wilder*, 28 L. C. J. 126 Q. B. 1884.

#### XXIII. PROCEDURE IN.

214. Motion to reject an appeal on the ground that it was taken after the delay granted by the Code, and that it was not served on the attorney in person, but at the clerks office. The judgment was rendered on the 28th February, security was given, on the 2nd April, and the petition was served on the 7th April. Appellant answered that the judgment from which the appeal was taken was rendered in Review, that it reversed the judgment of the Court at Beauce, and was not registered in Beauce until the 30th March. It was therefore in time under Art. 502 C. C. P. Motion rejected. *Lessard & Genet*, 6 L. N. 154, Q. B. 1883.

#### XXIV. QUESTIONS OF QUANTUM IN.

215. The Court of Appeal will not reverse a judgment because in a demand for damages the Court below has accorded a few dollars too much. *Mondon & Quintal*, 2 Q. B. R. 175 Q. B. 1882.

#### XXV. RIGHT OF.

216. On appeal from a judgment dismissing a demand for a prohibition to the Judge of Sessions, to prevent the execution of a sentence under Sec. 86 of the Seaman's Act 1873. *Held* that there was no right of appeal. *Clarke & Chauveau*, 8 Q. L. R. 98, Q. B. 1882.

217. Appeal may be had from every appealable judgment, even when no written *enquête* has been made, but on questions of law only, and such an appeal will not be dismissed on account of a merely clerical error, where no injury is done to the parties. *McKenzie & Turgeon*, 2 Q. B. R. 243, Q. B. 1882.

218. The plaintiff sued the defendant in a hypothecary action of \$12, due by his *auteur en garantie* for school taxes on the property held by him. The defendant called in his *auteur en garantie*. The judgment of the first Court, maintained the principal action and dismissed the action *en garantie*. *Held* that the action was appealable. *Crépeau & Talbot*, 10, Q. L. R. 49, S. C. R. 1883.

#### XXVI. SECURITY IN.

219. Application to reject appeal on ground of insufficient security. The appellants were opposants in the Court below, and claimed immoveable property seized, and their opposition was dismissed with costs. The respondent contended that they should have given security for the amount of the respondents judgment, and that the deposit of \$300 in money in the hands of the prothonotary was in any case insufficient. Application rejected. *Lionais & Molson's Bank*, 25 L. C. J., 226 Q. B., 1880.

220. Application to reject an appeal on the ground that the security was put in one day prior to that stated in the notice served on respondent. The difficulty arose from the fact that the original notice and copy served did not agree. In the absence of any objection to the securities themselves application rejected. *Canada Investment and Agency Company & Hudon*, 25 L. C. J. 227 & 2 Q. B. R., 128, Q. B., 1880.

221. An opposant who appeals from a judgment in a case in which he was not defendant is bound to furnish security only for the costs. *Lionais & Molson's Bank*, 2 Q. B. R. 194, Q. B., 1880.

222. Security in appeal from a judgment of the Circuit Court must be in terms of Article 1143 C. C. P. and an obligation on the part of the surety to pay a sum of \$200, in case the appellant does not prosecute the appeal, &c., is not sufficient. *Felton & Bélanger*, 2 Q. B. R., 107 Q. B., 1881.

223. Action for the purpose of having a deed of donation declared null. In July, 1880, the plaintiff made a donation to his brother, the defendant, of his undivided share in the father's estate, about one-third of which consisted of an emphyteutic lease which was to expire in eight years. The remainder of the estate consisted of immoveable property in the City of Montreal. In 1881, the donor brought an action *en nullité*, alleging fraud on the part of the donee, and by his conclusions he prayed that the deed might be set aside, and declared null and void, and that the defendant be condemned to cancel the registration of the deed of donation within a certain delay, and that in default of his so

doing, the judgment of the Court should effect the discharge of the registration. The Court of Review, reversing the judgment of the Superior Court, maintained the action and granted the plaintiff all the conclusions of his action. The defendant appealed from that judgment, and contended that he was bound to give security for costs only, on the principle that there was no other condemnation in the judgment than to have the registration cancelled, and that the judgment itself would have this effect if nothing was done by the defendant towards that end. *Held* that he must give security not only for costs, but that he will prosecute the appeal and satisfy the condemnation in case the judgment was confirmed. *McCord & McCord*, 5 L. N., 246 S. C., 1882.

224. The security on appeal from a judgment dismissing an application for discharge under the Insolvent Act 1875 and amendments, must be given within eight days from the rendering of the judgment, and consequently notice given within the eight days from the rendering of the judgment that security would be given on a day subsequent to the eighth day was held to be insufficient. *O'Neill & Morrice*, 26 L. C. J., 212 Q. B., 1882.

225. It is necessary to give notice to the opposite party before putting in security for an appeal to the Queen's Bench from a judgment of the Superior Court. *Dorion & Dorion*, 6 L. N., 325 Q. B., 1883.

226. Le cautionnement donné par le condamné sur une action en déclaration d'hypothèque ne doit pas être estimé en y comprenant la valeur de l'immeuble dont le délaissement est ordonné, ou de la somme à être payable dans le cas où le défendeur ne délaisserait pas, mais seulement pour les condamnations en argent auxquelles il peut être condamné. *Rochette & Ouellet*, 9 Q. L. R., 361 Q. B., 1883.

227. Nevertheless the bond should be in terms of Art. 1124 C. C. P., and the prothonotary ought not to limit its terms to the payment of costs. *Rochette & Ouellet*, 6 L. N., 412 Q. B., 1883.

228. And when the defendant makes a deposit instead of giving security which the prothonotary has declared should be for the payment of costs only, a motion to set aside the deposit as insufficient will be rejected if it appears to the Court that the deposit is sufficient to cover any condemnation in money, whether for costs or otherwise, to which the defendant is liable to be condemned, and the prothonotary's order will be amended. *Ibid.*

229. The judgment appealed from did not dispose of the case either intentionally or by oversight. *Held* that appeal did not lie *de plano*. *Paradis & Lemieux*, 6 L. N. 155 Q. B., 1883.

230. On appeal from a judgment dismissing the contestation of a report of distribution the appellant is bound to give security for costs only. *Pangman & Buchanan*, 6 L. N., 388 and 27 L. C. J., 311 Q. B., 1883.

## XXVII. SERVICE OF.

231. Motion to reject appeal, the service being irregular. The service was made on Maloin & Maloin, attorneys of Respondent in the Court below, by serving a copy personally on Philippe Maloin. The attorney in the Court below was Jacques Maloin, and a different person from Philippe Maloin and not merely a misnomer. The time for appeal had elapsed. Appeal rejected. *Gauvin & Rochette*, 5 L. N., 142 Q. B., 1882.

## XXVIII. SIGNATURE OF WRIT.

232. A writ of appeal is not necessarily null because it has not been signed by the attorneys of the appellant. *Canada Investment & Agency Co. & Hudon*, 2 Q. B. R., 128 Q. B., 1880.

## XXIX. SURETIES IN.

233. A surety for costs in appeal cannot ask to be discharged before judgment, except in the cases provided for by Art. 1953 of the Civil Code. *Nightingale & Société de Construction St. Jacques*, 2 Q. B. R., 193 Q. B., 1881.

234. Rule against *mis en cause* for coercive imprisonment. He had been condemned to pay plaintiff \$434.94 with interest as surety in appeal, and pleaded to the rule that on the 6th July 1877, he had been put into insolvency under the Insolvent Act of 1875 and had included plaintiff's claim among his liabilities under a supplementary statement of April 1879. He relied on section 61 of the Insolvent Act. *Held* that as the supplementary list was not filed in time to allow plaintiff to obtain the same dividend as the other creditors, and as he had no confirmation of discharge, he remained liable to imprisonment as judicial surety. Rule absolute. *Fuller & Farquhar*, 4 L. N. 244, S. C. 1881.

## XXX. SUSPENDS EXECUTION.

235. Where a judgment of the Court of Queen's Bench in appeal, has been rendered, declaring that certain rents, which had been attached were really "aliments" and insaisissable, the party in whose favor such judgment has been rendered cannot obtain an order to execute the judgment provisionally, if permission to appeal from the judgment to the Privy Council has been granted. *Molson & Carter* 7 L. N. 292, 28 L. C. J. 103 Q. B. 1883.

## XXXI. TERMS OF COURT.

It shall be lawful for the Lieutenant Governor in Council to appoint from time to time by proclamation one or more additional terms of the Court of Queen's Bench, sitting in appeal, to be holden at such place and during such time as may be determined by such proclamation. Q. 46 Vic., Chap. 26, Sec. 56.

## XXXII. TO PRIVY COUNCIL.

236. Case of *Brewster & Lamb*, (II Dig. 71, 364) reported in full 25 L. C. J., 210 Q. B. 1880.

237. An appeal from the Supreme Court to the Privy Council will not be allowed where the only issue raised is one of fact. *Canada Central Railway Company & Murray*, 27 L. C. J., 163 P. C. 1883.

238. Motion for leave to appeal to Privy Council on the ground that there was a part of the sum payable to Her Majesty. Motion rejected on the ground that there was no issue as to the exigibility of the auctioneers tax. *McLeod & Masham*, 4 L. N. 99, Q. B.

## XXXIII. TO SUPREME COURT.

239. *Jugé*:—Que le droit d'appel à la Cour Suprême d'un jugement rendu par la Cour du Banc de la Reine, sur une opposition faite par le défendeur à l'exécution d'un jugement est réglé par le montant de l'intérêt de la partie requérant l'appel. *Bourget & Blanchard*, 9 Q. L. R. 262, Q. B., 1882.

240. Although the amount claimed by the declaration was made to exceed \$2,000 by including interest which had been barred by prescription the appeal would lie. *Ayotte & Boucher*, 9 S. C. Rep., 460 S. C., 1883.

241. The Court of Queen's Bench, or a judge thereof, has a right to grant or refuse leave to appeal to the Supreme Court from a judgment of the Queen's Bench, and the decision of the one or the other is final. *Bourget & Blanchard*, 6 L. N. 51, Q. B., 1883.

242. An appeal to the Supreme Court will not be allowed where the interest of the appellant is less than \$2,000. *Ibid*.

APPEARANCE *See* PROCEDURE.APPRENTICES *See* MASTER AND SERVANTS.ARBITRAGE *See* ARBITRATION.ARBITRATION *See* EXPERTS

## I. PROCEEDINGS IN.

243. Action to set aside an award of arbitrators and *amiables compositeurs*. The parties R. and C. with one A. R. went into partnership as wood merchants, in November 1874. The partnership was dissolved in November 1881, and three arbitrators agreed upon between A. and C. by deed of date 21st November, 1881. R. having previously withdrawn by

going into insolvency. An award was made on the 13th March 1882, and R. found debtor of C. for \$14,000. The principal point urged against the award was that lawyers had been heard on behalf of some of the parties and refused to others. Action dismissed and award maintained (1). *Rolland & Cassidy*, 7 L. N. 70 S. C., 1884.

ARBRES—*See* TREES.ARCHITECTS—*See* BUILDERS, CONTRACTORS.

## ARPENTEURS.

I. DUTIES OF IN ACTION EN BORNAGE, *see* ACTION EN BORNAGE.

## ARREARS.

I. OF INTEREST, *see* INTEREST, PRESCRIPTION.

II. OF TAXES, *see* TAXES.

III. REGISTRATION OF, *see* REGISTRATION.

ARREST—*See* IMPRISONMENT.

I. ACTION FOR FALSE, *see* DAMAGES.

II. WITHOUT WARRANT.

244. An arrest under the Vagrant Act cannot be made without warrant after an interval of time following the offense, and where such unauthorized arrest was made, the city was held liable in damages. *Walker & City of Montreal*, 4 L. N., 215 S. C., 1881.

## ARREST OF JUDGMENT.

I. IN CIVIL CASES, *see* JURY.

II. IN CRIMINAL CASES.

245. On a trial for intent to murder, a reserved case was brought before the Queen's Bench in error and appeal on a motion in arrest of judgment which impugned the indictment upon which the defendant had been convicted, on the ground that the words, "of malice aforethought" had been omitted from the averment, therein of the intent to murder, and also on the ground that the word "feloniously" had been written felonious. *Held* on the latter point that the Statute empowered the Court to adjudicate not on what merely appeared on the face of the case reserved, but on what, in addition

(1) In appeal.

there to, had been therein reserved for their consideration, and the Court were therefore unable to look at it; but with regard to the first point the omission of the words "of malice aforethought" was a substantial defect in the indictment such as could not be cured by amendment or covered by the verdict, and judgment should therefore be arrested. *Regina & Carr*, 26 L. C. J., 61 Q. B., 1872.

### ARRÊT — See JUDGMENTS.

I. SAISIE ARRÊT, *see* ATTACHMENT.

### ARSON — See CRIMINAL LAW.

### ARTICULATION OF FACTS — See PROCEDURE.

### ASSAULT.

I. CONVICTION FOR, A BAR TO CIVIL ACTION.  
II. JUSTIFICATION FOR.

I. CONVICTION FOR, A BAR TO CIVIL ACTION.

246. Action of damages for an assault and battery committed by the defendant upon the plaintiff, at Sherbrooke. Plea *inter alia* that there had been complaint made against him before a justice of the peace for the offense and he had been convicted and fined \$15 and costs, and had complied with the terms of the conviction. *Held* following *Marchesault & Gregoire* (1) and overruling the judgment of first instance, that in cases of common assault, defendant was released from all further proceedings for the assault. *Pin-gault & Symmes*, 7 L. N. 3, S. C. R., 1883.

II. JUSTIFICATION FOR.

247. Action of damages for assault brought against the manager and an employee of the Chambly Cotton factory. The circumstances were as follows:—The plaintiff and his wife were employed in the factory, and at the time of the assault complained of, Mrs. B. (the wife) had been discharged and was ordered to leave the factory. She refused to go unless she was paid two weeks' wages, because employees were entitled to two weeks' notice of dismissal. The defendant G. refused to pay her, and proceeded to eject her by force. She was very angry and excited, and resisted. G. took her by the arm, and also

(1) 1 Dig. 335, 1053.

used his knee to assist her movements towards the door, and to put her out. She fell down on the outside, and it was pretended that a miscarriage was the result, but of this there was no proof. Now her husband brought an action of damages, alleging that she had been seriously injured by the violence used. The defendants pleaded that the ejection of the plaintiff was necessary for the maintenance of order in the factory, and that no greater force than was absolutely required had been used in putting her out. The Court was of opinion that the defence had been made out. The plaintiff's wife might be entitled to two weeks' notice—the Court did not pronounce any opinion on that point—but there would be a right to bring an action for her wages if she was entitled to any. But she was not justified in refusing to leave the building when ordered to do so. The defendants did not appear to have used any greater violence than was absolutely necessary, and under the circumstances the action must be dismissed with costs. *Blanchard v. Greenwood*, S. C., 1882.

### ASSEMBLÉE DE PARENTS *See* FAMILY COUNCIL

### ASSESSMENTS.

I. ACTION FOR.  
II. FOR IMPROVEMENTS.  
III. FOR SIDEWALKS.  
IV. PRIVILEGE FOR, *See* MUNICIPAL CORPORATIONS.

ACTION FOR.

248. Action was instituted in 1882, for the recovery of assessments and taxes for the fiscal year from the 1st May 1876 to the 1st May 1879 and the conclusions against the defendant were that he be condemned personally and also hypothecarily as the owner of the real estate described in the declaration and upon which the assessments and taxes sued for accrued. During the said three fiscal years, A. B. was proprietor of the said real estate and on the 5th May 1879 he sold the real estate in question to the defendant. *Held* that the privileges of the Corporation of the City of Quebec for assessments and taxes is limited to those due for the current and preceding year, and that the said corporations have no general hypothec for assessments and taxes accrued previously to those for which they have such special privilege, and that the personal action for such assessments is subject to the prescription of five years. *Corporation of Quebec & Vallerand*, 10 Q. L. R. 107, S. C. 1884.

## FOR IMPROVEMENTS.

249. A special assessment roll to defray the cost of an improvement in the City of Montreal comes into force from the date of its deposit in the office of the City Treasurer, and the prescription of three months under 42-43 Vict. C. 53 S. 12, applicable to proceeding, to set aside such roll, runs from that date. *Joyce & City of Montreal*, 7 L. N. 260, S. C. 1884 & Ib. 7 L. N. 263 S. C. 1884.

250. Petition by a municipal corporation to annul a special assessment roll made by commissioners acting in virtue of a resolution of the corporation, for the purpose of a local improvement and under an appointment for that purpose made by the Court of Review. The right to petition is based on Sec. 12 of 42-43 Vic., c. 53, which is as follows:—"Any municipal elector in his own name, may, by a petition presented to the Superior Court, sitting in Montreal, demand and obtain on the ground of illegality, the annulment of any by-law, resolution, assessment roll or apportionment, with costs against the corporation. *Held* that commissioners acting under the 42 & 43 Vic., Cap. 53, regulating proceedings for the preparation of special assessment rolls for improvements in the City of Montreal, are not authorized to go beyond the terms of the resolution of council settling the proportions of costs to be levied on the proprietors benefited. And where an action was brought to annul a special assessment roll without attacking the resolution under which it was prepared the Court held that the question whether the City had power to limit its share to one third of the cost of the improvement was not put in issue and could not form a subject of enquiry. *Rivet & City of Montreal*, 7 L. N., 122 S. C., 1884.

## II. FOR SIDEWALKS.

251. Under a Statute of Quebec, 37 Vic., Cap. 7, Sec. 192, to that effect, the corporation of Montreal, adopted a resolution of its road committee that a flag stone footpath be laid in certain streets, and that the cost be borne one half by the Corporation and one half by the proprietors of the real estate situate on either side of such streets, by means of a special assessment to be levied in proportion to frontage of their properties respectively. Appellant paid the assessment under protest and then brought action to test its validity. The action was based on a number of grounds, both of fact and law, the principal of which was that in the absence of a provision of Statute allowing the system to be introduced gradually, the Council could not force the proprietors in said streets to pay the cost of one half of the new sidewalks, while the proprietors in other streets are wholly provided with sidewalks out of the City funds without any contribution on their part. *Held* dismissing the action on all the grounds, that it was impossible for the Court to arrive at the conclusion that because of this irregularity,

the Legislature meant to impose a condition which if possible would ruin either the corporation or the proprietors or both. *Bain & the City of Montreal*, 5 L. N., 76 & 2 Q. B. R., 221 Q. B., 1882, & 8 S. C., Rep. 252 S. C., 1883.

## ASSESSMENT ROLL.

## I. FORMALITIES IN.

252. A municipal corporation can make a new assessment roll only once in three years in virtue of Art. 716 M. C., and if it makes a new roll before the expiration of three years a suit of prohibition will be granted to restrain the corporation from persisting in the collecting of taxes then unknown. *Beauvais & Corporation de Hochelaga*, 12 R. L., 31 S. C., 1881.

253. That the formalities prescribed by the Municipal Code with reference to a collection roll must be strictly followed as in the case of an *acte de répartition* annexed to a *procès-verbal*, and where such formalities have not been observed the taxes thereby imposed, are not exigible, and a sale of land for arrears of such pretended taxes will be annulled. *Corporation de Chambly & Scheffer*, 7 L. N., 390 & M. L. R., 1 Q. B., 42, 1884.

254. And where the taxes are illegal in consequence of there being no valid assessment roll in existence, acquiescence will not give validity to such assessment. *Ib.*

## ASSETS.

I. OF COMMUNITY, *see* MARRIAGE CONTRACTS.

II. OF INSOLVENT ESTATE *see* INSOLVENCY.

## ASSIGNEES.

I. IN INSOLVENCY CANNOT PLEAD ON BEHALF OF THE CREDITORS, *see* ACTION INTEREST IN.

ASSIGNMENT — *See* TRANSFER.

I. IN INSOLVENCY, *see* INSOLVENCY.

II. IN TRUST FOR CREDITORS, *see* CAPIAS. CENSIONS DE BIENS.

"ATALAYA," THE — *See* FOREIGN ENLISTMENT ACT.



## ATTACHMENT.

## I. ACTION OF DAMAGES FOR INSTIGATING.

## II. BEFORE JUDGMENT.

*Affidavit.**Contestation of.**Grounds of.**Of Immoveables.*

## III. BY GARNISHMENT.

*Contestation of declaration.**Delay to contest.**Deposit of money in Court.**Effect of.**Grounds of.**Jurisdiction on contestation of declaration.**Of debts not due.**Of wages not due.**Right of.*

## IV. CONSERVATORY.

## V. IDENTIFICATION OF GOODS SEIZED.

## VI. IN HANDS OF JUDICIAL GUARDIANS.

## VII. IN REVENDICATION.

*Grounds of, see SALE, TRANSFER OF PROPERTY.*VIII. OF PROPERTY OF COMMUNITY BY WIFE  
PENDING ACTION EN SEPARATION, *see* ACTION  
EN SEPARATION.IX. WRITS OF MAY BE ISSUED AFTER HOURS  
AND WITHOUT STAMPS.

## I. ACTION OF DAMAGES FOR INSTIGATING.

255. The plaintiff sued for \$1,200 damages, for defendant having instigated one B. to take out two *saisie-arêts* before judgment, against plaintiff's goods and chattels for plaintiffs' fraudulent secreting of property and meditation of flight. Plea—justification, and reasonable and probable cause for making any statement he may have made to B. or other creditors of plaintiff and defendant being partners, that their partnership property had been sold by auction and \$900 of the proceeds taken by plaintiff who went to the States. *Held*, dismissing the action, that plaintiff going to the States with the money without paying the debts and without any kind of intimation to anybody of his intention to leave Montreal was enough to raise the worst suspicions in the mind of his partners, and warranted him in saying all he did even if he had advised B. to make the seizure. *Chapman & Benallack*, 5 L. N. 198, S. C. R., 1882.

## II. BEFORE JUDGMENT.

256. *Affidavit*.—An affidavit for attachment before judgment set out as follows:—"And this deponent saith that he is credibly informed and hath every reason to believe and doth verily and in his conscience believe that the said defendants are now immediately about to secrete their estate debts and effects with an intent to defraud the said plaintiff and their creditors." The Superior Court held the affidavit insufficient on the ground that the plaintiff "did not in

"his said affidavit swear as was required to be sworn in such affidavit at the date thereof that the defendant is secreting his property with intent to defraud his creditors and the plaintiff in particular, but instead of so swearing swore only that he was credibly informed had every reason to believe, &c." In Appeal, this decision was reversed on the ground that "the said affidavit fulfils the requirements of the Art. 834 of the said Code, which article has not in effect altered the previous law on the subject, and that the said affidavit was sufficient to justify the issuing of the said writ of *saisie-arêt*." *Brook & Dallimore*, 6 R. L., 657 Q. B., 1874. (1)

257. The affidavit of the plaintiff for *saisie-arêt* before judgment alleged "*que le défendeur avait cédé ses biens avec l'intention de frauder ses créanciers en général ou le débiteur en particulier*." Defendant contested on the ground that the affidavit was vague and uncertain, and that the deponent should have sworn positively to the intention of the defendant to defraud somebody, and not alternatively that the intention was to defraud the creditors in general or himself in particular. *Held* under authority of Q. 35 Vic. Cap. 6 Sec. 18, (2) to be sufficient. *Arcand & Flanagan* 7 Q. L. R. 256, C. C. 1880.

258. Petition to quash an attachment before judgment on the ground that it was not alleged in the affidavit that the defendant was personally indebted to the plaintiff or where the debt was contracted; that the jurat did not show the date of the affidavit; that the signature and quality of the officer who took the affidavit were not set out in an authentic manner. *Per curiam*.—On referring to the affidavit I find that it states that the defendant is indebted to the plaintiff in the sum of \$6,153.75, for the price and value of goods, wares and merchandise sold and delivered by the plaintiff to the defendant at different days mentioned, and the price of which is due, and for a promissory note due in December last. Now if this is not a personal indebtedness I would like to know what it is. It is contended that the word personal is sacramental, I do not think so. It was not necessary to state in the affidavit where the goods were sold. The affidavit shows a sufficient cause of action. It appears from the first that the affidavit was sworn on the 29th of December, 1883, before Her Britannic Majesty's Consul-General at New-York, and by article 30 of the Code of Procedure every such deposition shall have the same

(1) Omitted from 1st Vol. of *Digest*, as also the judgment in appeal in *Griffith & McGovern* (referred to in *Brook & Dallimore*) which was to the same effect, and also reversed that of the Court of Review. I *Digest*, p. 113.

(2) Art. 834 of said Code is hereby amended by inserting therein immediately after the words "secreting" the word "or is about to secrete," and by substituting in place of the words "creditors and the plaintiff," the words "creditors or the plaintiff."

validity as if taken in open court. The affidavit is sufficient and the petition to quash is dismissed with costs. *Ryle & Corriveau Silk Co. S. C. 1884.*

259. Where the affidavit for an attachment before judgment is made by one of the plaintiffs, it is not necessary to state that the deponent is authorized. *Dougall & Brun, 12 R. L. 614 S. C. 1884.*

260. And the fact that the affidavit alleges in the singular that the plaintiff will loose his debt &c, when there are several plaintiffs, is not an irregularity sufficient to annul the seizure. *Ib.*

261. Nor is the deponent bound to give his reasons for the statement that the defendant is notoriously insolvent. *Ib.*

262. An affidavit for a writ of attachment before judgment which states that "*le défendeur recèle ses biens avec l'intention de frauder ses créanciers, ou nommément le demandeur,*" is irregular, and the attachment founded upon it was set aside. *Vineberg & Harrowitch, 12 R. L. 648 S. C. 1884.*

263. *Contestation of.*—An attachment before judgment can only be contested by a petition in the manner provided by the Code of Procedure. *Quintal & Meunier, 11 R. L. 554, S. C. 1880.*

264. *Grounds of.*—Attachment before judgment on the ground that the defendant intended to remove to the United States and was secreting her effects. No proof of the first ground, and under the second it was proved that she had sold all her effects, moveables, &c., some time before the attachment for the sum of \$2,000, which had been handed over to privileged creditors. The sale was a public one. Attachment quashed. *Latour & Brunelle, 4 L. N., 141 S. C., 1881.*

265. A partner leaving the business of the firm unsettled departed to the United States, takes with him several hundred dollars belonging to the partnership. *Held* that there was probable cause for an attachment at the instance of the remaining partners of the partnership effects, and an action of damages for such seizure should not be maintained. *Chapman & Benallack, 5 L. N. 109, S. C., & 198 S. C. R., 1881.*

266. Action is for a wrongful and malicious attachment of the goods and chattels of the plaintiff. The affidavit for the attachment complained of, after alleging the cause of debt was in the following terms: "*Que la dite E. D. est commerçante, notoirement insolvable, refuse de s'arranger avec ses créanciers et de leur faire cession à eux et à leur profit, et continue son commerce. Que le dit déposant est informé d'une manière croyable, à tout raison de croire et croit vraiment en sa conscience ce que la dite E. D. est sur le point de receler ses biens, dettes ou effets avec l'intention de frauder ses créanciers ou nommément le déposant demandeur, et que sans le bénéfice*

*d'un bref de saisie-arrêt simple, le demandeur déposant perdra sa dette et souffrira des dommages, et a signé.* The first question for the jury was as to whether the defendant, at the time of taking the said proceedings against the plaintiff by *saisie-arrêt*, had reasonable and probable cause for believing and making oath that the said plaintiff was immediately about to secrete her estate debts and effects with intention to defraud her creditors and defendant in particular. The second was as to whether at the same time the plaintiff was immediately about to secrete her estate debts and effects with intent to defraud her creditors and defendant in particular? The third question was, did the said defendant in issuing the said writ of *saisie-arrêt simple* against the plaintiff, act maliciously and without reasonable or probable cause? And the fourth, did the plaintiff suffer any and what damage by reason of the issuing and execution of the said writ? The jury answered the first two questions in the negative; the second two in the affirmative and assessed the damages at \$800. On a motion for judgment *non obstante veredicto* or for a new trial. *Held* that the plaintiff was as much bound to disprove the first charge in the affidavit, that the plaintiff, although insolvent, was continuing to carry on her trade, &c., as she was to disprove the second about the fraudulent secreting, and that the first charge contained in the affidavit, remaining as it did, unimpeached, justified the issuing and execution of the attachment. Motion for new trial granted. *Drolet & Garneau, 10 Q. L. R., 139 S. C. R., 1884.*

267. *Of Immoveables.*—Immoveables cannot be attached before judgment, under C. C. P., 834 (1). *Corbeil & Charbonneau, 4 L. N., 277 & 12 R. L. 316, S. C. R., 1881.*

268. Remarks of Johnson, J., on the judgment in *Corbeil & Charbonneau*, (2) maintaining a seizure of real estate before judgment as above. 4 L. N., 60 S. C., 1881.

### III. BY GARNISHMENT.

269. *Contestation of.*—When a *tiers saisi* whose declaration is contested, fails to answer the contestation the allegations of such contestation are not held to be admitted, but proof must be adduced in support of such contestation. *Mattinson & Cadieux, 25 L. C. J., 255 Q. B., 1880.*

270. The declaration of a garnishee cannot be contested without leave of the Court but such leave may be granted even after the delays have expired, on payment of costs. *Neveu & Rabeau, 4 L. N., 44 S. C., 1881.*

(1) Reversing S. C. *II Dig. 84, 404, Ed.*

(2) *II Dig. 84, 404.*

271. Motion by the plaintiff to be allowed to contest the declaration of the garnishee made in December 1877, and on the part of the garnishee that he be discharged. Similar motions were made in the February previous. The petition of the Bank failed because it showed no reason why it should be allowed to contest, and was unsupported by affidavit. The demand for peremption failed because the petition of the bank served a few days before was held to be an interruption of the peremption. The present application of the Bank gave no reasons why it should so late in the day be allowed to contest. Besides the Bank had lodged another attachment in the hands of the garnishee. Both motions rejected. *Banque Ville-Marie & la Société de Construction du Canada*, 4 L. N., 86 S. C., 1881.

272. The contestation of a garnishee's declaration forms a separate and distinct issue from that of the original action, and if the amount involved in such contestation by the addition of interest and cost to the original amount sued for exceeds the jurisdiction of the Circuit Court it will be sent to the Superior Court. *Wright & the Corporation of Stoneham*, 7 Q. L. R. 133, S. C., 1881.

273. That when the seizing creditor in a seizure by garnishment has allowed the eight days to elapse without contesting, he cannot afterwards contest the declaration of the garnishee without leave from the Court. *Asile & Andrews*, 9 Q. L. R. 144, S. C., 1883.

274. *Declaration of garnishee.*—Motion by defendants to reject the inscription for judgment on the declaration of the garnishee, on the ground that they were not notified of the time when he would make his supplementary declaration, and that in consequence they were prevented for cross-examining him, which they had a right to do. *Per curiam*. Under article 619 of the Code of Civil Procedure, the plaintiff has a right to be present when a garnishee makes his declaration and to question him, but there is no law which obliges a garnishee to notify the defendant of the time when he will make his declaration. Besides the defendants' attorney received a short notice of the time of making of the declaration. The motion is dismissed with costs. *Vaillancourt & Payton*, S. C. 1884.

275. *Delay to contest.*—The plaintiff having sued the defendant took *saisie-arrêt pendant l'instance* in the hands of five *tiers-saisis* of whom four were the sons of defendant. The *tiers-saisis* made their declaration the 14th May 1880. But nothing was done on it until the 12th December 1881. The declaration of the *tiers-saisis* was that they owed nothing. Nevertheless on the latter date the plaintiff demanded judgment against the *tiers-saisis* which was refused. The plaintiff then on the 15th December 1881 made a motion to be allowed to contest which was granted, and on the 30th January 1882 the contestations were filed. On the contestation

the four sons of defendant admitted having purchased from their father on account of amounts due them, certain furniture of which they immediately took possession. The contestation was on the ground of fraud and collusion between the defendant and the *tiers-saisis*, and the latter answered that the contestation was too late as having been made nearly two years after the sale was known to plaintiff. Plaintiff replied that the contestation had been delayed by offers of arrangement on the part of the *tiers-saisis*, and that moreover as he had been specially authorized by motion which the *tiers-saisis* did not oppose they could not avail themselves of the plea of delay. The evidence was to the effect that the offers of settlement were not made until nineteen months after the declaration of the *tiers-saisis*, while on the other hands the *tiers-saisis* admitted that they knew the defendant was insolvent at the time of their taking the furniture, and that it was to save so much of their claims that they did so. The judgment in the first instance maintained the contestation on the ground that the transactions between the defendant and his sons were fraudulent and simulated, that the permission to contest had been regularly obtained from the Court, that the plaintiff in any case could not be deprived of his right without a foreclosure granted by the court, and that as to the limitation of a year prescribed by article 1040 of the Civil Code (1) that did not run during the pendency of the attachment. In Review the judgment was reversed on all the grounds, but principally on the ground of the laches of the plaintiff and the lapse of time. *Richard & Michaud*, 8 Q. L. R., 244 S. C. R., 1882.

276. *Deposit of money in Court.*—On the 14th September 1881, the plaintiff had obtained a judgment against the defendant for \$316.58, and on the 29th of October following, the defendant's petition in revocation of that judgment was dismissed; whereupon the plaintiff immediately issued a *Saisie-Arêt* after judgment, to attach the moneys of the defendant in the hands of all the Banks in the City of Montreal. Shortly after the service of this seizure the defendant inscribed in Review from the judgment of 29th October, which dismissed his *Requête civile*, and on the 4th November, 1881, presented a petition praying that he might be permitted to deposit in Court the amount of the original judgment in principal, interests and costs, together with a further

(1) No contract or payment can be avoided by reason of anything contained in this section at the suit of any individual creditor unless such suit is brought within one year from the time of his obtaining a knowledge thereof. If the suit be by assignees or other representatives of the creditors collectively it must be brought within one year from the time of his appointment. 1040 C. C.

sum for costs of the seizure, the whole to abide the decision in Review; and that upon so doing *main-levée* of said seizure be granted him. Petition granted. *Lebourveau & Beard* 5 L. N. 335, S. C., 1882.

277. *Effect of*.—Judgment on the declaration of a garnishee operates a judicial assignment to the plaintiffs, and an opposition subsequently filed by another creditor, alleging insolvency of the defendant (as of date of opposition) and asking that the money be paid into Court is insufficient, and will be rejected on motion. *Taylor & Brown*, 7 L. N. 62, S. C., 1884.

278. *Jurisdiction on contestation of declaration*.—Where the *Tiers-Saisi* declared that he had nothing belonging to the defendant, and that a balance of \$1,150 which he had owed to the defendant the latter had transferred to a third party by deed. The plaintiff contested this declaration and asked that the deed of transfer be set aside. The action originally was in the Circuit Court and there the contestation was maintained, but held in Review that as the contestation was simply in fact an action to revoke a deed of \$1,100 and upwards, that the Circuit Court had no jurisdiction, and judgment reversed, but without costs, as the parties had not noticed the want of jurisdiction, and it was left to the Court to discover it. *Lapointe & Belonger*, 7 Q. L. R., 316 S. C. R., 1881.

279. *Of debts not due*.—An attachment in the hands of a garnishee of a debt afterwards due the defendant by the garnishee, is valid if such debt becomes due before the garnishee makes his declaration. (1) *Molson's Bank & Lionais*, 5 L. N., 252, & 27 L. C. J., 40 & 2 Q. B. R., 176 Q. B., 1881.

280. *Of wages not due*.—When an employer has contracted with his workman to pay him his wages in advance, a seizure made at two p.m. on the day on which the wages are payable under the agreement is inoperative. *Geddes & Doudiet*, 5 L. N., 153 S. C., 1882.

281. The *Tiers-Saisi* was condemned as the personal debtor of the defendant. The plaintiff took an attachment against him in the hands of his employer. J. G. S. appeared, but declined to answer questions touching the terms of R.'s engagement, claiming that wages not due could not be seized. Upon motion of plaintiff to make the *Tiers-Saisi* answer. Held that he was bound to answer under Art. 619, C. C. P. *Shaw & Bateman*, 7 L. N., 368 C. C., 1884.

282. *Right of*.—The amount of a note due to a Mutual Insurance Co. for the premium on a policy may be the subject of an attach-

ment by garnishment on the part of one of the creditors of the Company. *Dickson & Beaver Mutual Insurance Co.*, 12 R. L., 27 S. C., 1881.

283. In the absence of fraud, negligence or maladministration, it is not competent to a judgment creditor of a Mutual Fire Insurance Company, of the Province of Quebec, to attach moneys payable to the Company by way of assessment, under the provisions of the liquidation Statute, 28 Vic., Cap. 13. *Lavoie & Mutual Fire Assurance Co. of Hochelaga*, 26 L. C. J. 166, S. C., 1882.

284. The creditor of a person forming part of a partnership has the right to seize by garnishment the assets of the partnership, according to the share of the debtor in the thing seized. *Eastern Township's Bank & Porter*, 11 R. L. 587, S. C., 1882.

285. L'assignation d'une corporation, comme tiers-saisie, faite à la tiers-saisie, à son bureau d'affaires, en parlant et laissant la copie de bref à l'un des principaux employés de la tiers-saisie (conformément à l'article 61 C. P. C.) lorsque la tiers-saisie fait défaut et ne fait pas de déclaration, et suffisante pour permettre au demandeur de faire condamner la tiers-saisie par défaut, (conformément à l'article 615, C. P. C.) cette signification devant être considérée comme personnelle, les mots politiques et incorporés, et la personnalité de la corporation étant toujours censée présente au bureau d'affaires de la corporation. *Beaulieu & Forgue*, 12 R. L. 331 C. C. 1883.

286. A sum of money awarded by judgment in an action of damages for libel is in its nature *insaisissable*. *Maurice & Desrosiers*, 7 L. N. 264 & 361 C. C., 1884.

#### IV. CONSERVATORY.

287. Where a partnership consisting of two persons was dissolved under an agreement, by which one of them purchased the stock and trade of the partnership for a certain sum of money, for which he gave his promissory note, and agreed for the security of the said notes to transfer to the other, a certain part of the machinery and effects belonging to the business, and also that he would not be considered proprietor of the stock till the notes were paid, and afterwards refused to carry out part of the agreement which referred to the transfer of the machinery as security, but on the contrary, commenced to sell out part of the assets. Held, that the other had a right to a Conservatory Attachment, notwithstanding that the notes were not yet due. *White & Murphy*, 12 R. L., 77, S. C., 1882.

288. The plaintiff having carted some goods of which he afterwards lost possession without being paid took a *saisie-arrest conservatoire* of the goods without affidavit but alleging a lien and privilege. This *saisie* the defendant now attacked by petition to quash, upon the grounds (*inter alia*), that the plaintiff had not complied with the requirements of the

(1) Reversing. II Digest, 86, -420.

articles of the Code of Procedure relating to seizures before judgment, and further that the plaintiff had no lien on the goods, and even if he ever had such a lien he had relinquished it by giving up possession. The plaintiff answered that a petition to quash only applied to the special cases of seizure before judgment provided for by the Code, and that a *saisie-arrêt conservatoire* must be met by ordinary pleading; and cited, among other cases, *Trudel & Trahan et al.*, 7 p. 177 (1874). *Held* that this seizure being a *saisie-arrêt conservatoire* it was not the subject of nor attackable by a petition to quash; and an affidavit such as is required by the Code in matters of *saisie-arrêt* before judgment, not being required to support the common law conservatory process taken in the case, the petition to quash was dismissed. *Burnett & Pomeroy*, 7 L. N. 110. S. C. 1884.

289. And in another case, the plaintiff seized in the hands of a third person all the moneys, goods, &c., belonging to the defendant and in his declaration alleged a privilege for part of his claim. The writ used was the ordinary *saisie-arrêt* before judgment with the words added in a marginal note "*par voie de saisie-arrêt conservatoire*," and issued on a special affidavit setting up the plaintiff's pretensions. Petition to quash on the ground that the attachment was not a conservatory process, but an ordinary attachment before judgment, and should have been accompanied by the usual affidavit. Petition dismissed. *Blumenthal & Forcimer*, S.C. 1885.

#### V. IDENTIFICATION OF GOODS SEIZED.

290. On an attachment of certain timber claimed by the plaintiff to have been cut on his land. *Held* that the only identification possible or necessary was that the plaintiff should seize the number and kind cut on his land from the mass of timber with which they had been mixed. *Allard & Tourville*, 8 Q.L.R. 237. S. C. R. 1882.

#### VI. IN HANDS OF JUDICIAL GUARDIAN.

291. The seizure of the goods of a defendant by process of *saisie-arrêt* in the hands of the judicial guardian in whose custody they are is valid. *Merchants Bank & Montreal, Portland & Boston Railway*, 6 L. N. 229, S. C. R. 1883.

#### VII. IN REVENDICATION.

292. The plaintiff by seizure in revendication sought to obtain possession and delivery of a quantity of cord wood sold by the defendant. *Held* that the seller was not bound to deliver the things sold until payment of the price, unless the sale was on credit, and that in any case when the object was indeterminate that the plaintiff had no right to revendication. *Contant & Normandin*, 11 R. L. 479, S. C. 1882.

293. An agreement by which the owner of

a horse hires it for a term of seven months at the rate of \$3 per week with the stipulation, that should the payments all be duly made the horse would become the property of the person hiring it, does not deprive the owner of his right of ownership until the whole amount is paid, and should the person hiring make default in any of the payments, the owner has a right to revendicate it in the hands of a third party. *Bertrand & Gaudreau*, 12 R. L. 154, C. C. 1882.

294. In June 1881 the plaintiff sold to the defendant 17 dozen of hats at \$5 per dozen, cash. The hats were delivered, and the defendant, after having induced the plaintiff to sign a receipt, offered him in settlement a promissory note which he had obtained for the purpose. Plaintiff refused to accept this, and took a *saisie revendication* to recover the hats. *Held* that notwithstanding the seizure gave the defendant no alternative to pay the price of the hats the sale must be declared null, and the defendant and *gardien* ordered to restore them. *Watso, & Labelle*, 26 L. C. J. 120, C. C. 1881.

295 Seizure and revendication of a horse, waggon and harness in the possession of the defendants against the will of the plaintiffs, the proprietors. The defendants denied that they had possession of these things; said that plaintiff had sold them their business in December 1881, and placed the articles claimed in the possession of one M. to be sold by him; and meanwhile the defendants were to have the use of them by paying for the keep of the horse; that the horse always remained in possession of said M. until about the time of the seizure, when M. sold the horse to the person actually in possession when the seizure was made. *Held* on proof maintaining the seizure. *Oshawa cabinet Co & Shaw*, 6 L. N. 243, S. C. 1883.

#### VIII. OF PROPERTY OF COMMUNITY BY WIFE PENDING ACTION EN SÉPARATION See ACTION EN SÉPARATION.

#### IX. WRITS OF MAY BE ISSUED AFTER HOURS AND WITHOUT STAMPS.

The following article is added to the said Code after article 467.

"467a"—In cases of *capias*, attachment before judgment, attachment for rent, conservatory attachment, and in all cases of urgency, the writ may be issued outside office hours, without having judicial stamps thereon, provided that the amount of such stamps be deposited with the officer issuing the writ, who is bound to affix the stamps upon the *fiat* as soon as possible" Q. 48 Vic., Cap. 27, Sec. 7.

#### ATTORNEY GENERAL.

#### I. OF PROVINCE CANNOT BRING PROCEEDINGS TO SET ASIDE PATENT.

## II. POWERS OF CANNOT BE DELEGATED EXCEPT BY EXPRESS AUTHORITY.

### I. OF PROVINCE CANNOT BRING PROCEEDINGS TO SET ASIDE PATENT.

296. Proceeding in the nature of a *scire facias* to set aside letters patent of invention which had been issued under the Act of the Parliament of Canada, 35 Vic., Cap. 26. The proceeding had been taken in the name of the Attorney General of the Province of Quebec, and objection was made that the action could only be legally brought in the name of the Attorney General of Canada. Action dismissed. *Attorney General & Bate*, 27 L. C. J., 153 & 6 L. N., 271 S. C. R., 1883.

## II. POWERS OF CANNOT BE DELEGATED EXCEPT BY EXPRESS AUTHORITY.

297. Appeal from the judgment of the Queen's Bench (1) on the question as to whether the Attorney General or Solicitor General could delegate to counsel for the Crown the authority to direct that an indictment be laid before the Grand Jury, under 32 & 33 Vic., Cap. 29, Sec. 28. *Held* (reversing the decision of the Queen's Bench) that the Attorney General had no authority to delegate to the judgment and discretion of another the power which the Legislature has authorized him personally to exercise; that no power of substitution had been conferred, and therefore that the indictment was improperly laid before the Grand Jury. *Abrahams & Regina*, 4 L. N., 90 & 5 S. C. Rep. 10, Su. Ct., 1881.

298. *Held* that when the preliminary formalities required by Sec 28, 32, 35 Vic., C. 29, concerning Criminal Procedure have not been complied with an indictment for perjury, (2) will be quashed if it has not been preferred by the direction in writing of the Attorney General himself. *Granger & Regina*, 7 L. N., 247 Q. B., 1884.

(1) II *Digest* 219, 412.

(2) No bill of indictment for any of the offenses following, viz.: perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house, keeping a disorderly house, or any indictment for assault, shall be presented to or found by any Grand Jury, unless the prosecutor or other person presenting such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offense, or unless the person accused has been committed to or detained in custody or has been bound in recognizance to appear to answer to an indictment to be preferred against him for such offense, or unless the indictment be preferred against him by the direction of the Attorney General or Solicitor General for this Province, or of a judge of a Court having jurisdiction to give such direction or to try the offence. Restricted by 40 Vic., Cap. 21, Secs. 1 & 2, and extended to *Nuisance and Forcible entry and detainer*.

## ATTORNEY.

### I. POWERS OF *see* AGENCY.

## ATTORNEYS AD LITEM—*See* ADVOCATES.

### I. AUTHORIZATION OF.

### II. CHANGE OF.

### III. DIS-AVOWAL OF.

### IV. IMPERIAL ACT FOR THE RELIEF OF COLONIAL ATTORNEYS.

### V. LIABLE FOR BAILIFF'S FEES.

### VI. RIGHTS OF.

### VII. SUBSTITUTION OF.

### I. AUTHORIZATION OF.

299. Plaintiff, an advocate, sued the defendants for his professional services in an action *en bornage* brought against them. Plea want of authorization, and that they were not even aware that the suit had been instituted until some months after it had been determined. Defendants were a foreign company working mines in the Township of Thetford, and the process was served upon one of their workmen there, and came into the hands of plaintiff through a person who claimed to be agent of the defendants, who claimed to be in consequence *porteur de pièces*, and as such authorised to act. It did not appear that the agent in question had authority to employ any one to defend the suit. *Held* that under the circumstances plaintiff was not *porteur de pièces*, so as to authorize him to act and recover costs, and that he was bound to show his authorization, even without a *désaveu*. *Felton & Asbestos Packing Co.*, 7 Q. L. R., 263 S. C. R., 1880.

300. The production of a general authorization to sue for debts due to an absentee is a sufficient compliance, with Art. 120, C. C. P., and it is not necessary that the attorneys ad litem be named therein. *Major & Paris*, 7 L. N., 266 S. C., & 28 L. C. J., 104, 1884.

### II. CHANGE OF.

301. Where a case was inscribed in Review, and the party inscribing died before hearing, a motion to stay proceedings until the instance would be taken was granted. *Rice & Libby*, 4 L. N., 350 S. C. R., 1881.

### III. DIS-AVOWAL OF

302. The attorneys for the defendant were endeavoring to collect a bill of costs in an action of *Sicotte vs. Brazeau*, and the plaintiff filed an opposition, saying that he had never authorized the suit, or been cognizant of it. The opposition was in effect a disavowal of the attorney who instituted it. The diffi-

culty was that this attorney was not in the cause. The order of the Court was that the record be sent back to the Superior Court at Terrebonne, in order that the attorney might be duly notified and have an opportunity to be heard. *Sicotte & Brazeau*, S. C. R. 1883.

#### IV. IMPERIAL ACT FOR THE RELIEF OF COLONIAL ATTORNEYS.

Upon application made by the Governor or person exercising the functions of Governor of any of Her Majesty's colonies or dependencies, and after it has been shown to the satisfaction of Her Majesty's Principal Secretary of State for the Colonies that the system of jurisprudence, as administered in such colony or dependency answers to and fulfils the conditions specified in section three of the Colonial Attorney's Relief Act, and also that the attorneys and solicitors of the Superior Courts of law or equity in England are admitted as attorneys and solicitors in the Superior Courts of law and equity of such colony or dependency, on examination, except in the laws of the colony or dependency in so far as they differ from the laws of England, Her Majesty may, from time to time, by order in Council, direct the Colonial Attorney's Relief Act to come into operation as to such colony or dependency; although persons may, in certain cases, be admitted as attorneys or solicitors in such colony or dependency without possessing all the qualifications for admission, or having fulfilled the conditions specified in the said section three, and thereupon but not otherwise, the provisions of the "Colonial Attorney's Relief Act", shall apply to persons duly admitted as attorneys and solicitors in such colony or dependency after service and examination: that is to say, no attorney or solicitor of any such colony or dependency, shall be admitted as a solicitor of the Superior Court in England, unless in addition to the "Colonial Attorney's Relief Act" he proves by affidavit that he has served for five years under articles of clerkship, to a solicitor or attorney at law, in such colony or dependency, and passed an examination to test his fitness and capacity before he was admitted an attorney or solicitor in such colony or dependency, and further, that he has since been in actual practice as attorney or solicitor in such colony or dependency for the period of seven years at the least. C. 48-49 Vict. Page III.

#### V. LIABLE FOR BAILIFF'S FEES.

303. Where an attorney ad litem employs a bailiff to execute a writ and makes a special agreement with him as to charges, without stipulating that he is not contracting for himself he makes himself personally liable. *Paneton & Guillet*, 7 Q. L. R., 250 C. C., 1881.

#### VI. RIGHTS OF.

304. Where there is no distraction of costs, as where the Attorney is paid by his own client, he has no right to receive the bailiff's fees as part of his bill of costs, and if he does so the principal will be held liable to the bailiff for the amount of his fees. *Théroux & Green*, 7 L. N., 7 C. C., 1883.

#### VII. SUBSTITUTION OF.

305. A motion for substitution of attorneys made by consent of all parties interested may be granted as a matter of course without any adjudication upon the motion. *Auldjo & Prentice*, 1 Q. B. R., 125 Q. B., 1881.

#### AUDITION—See PROCEDURE.

#### AUTHENTIC ACTS—See DEEDS.

#### AU PLUS TOT.

#### I. INTERPRETATION OF TERM.

306. In an action of damages for not having furnished certain machines to the partnership of which plaintiff was a member. *Jugé que la stipulation dans un acte de société, qu'un des associés fournira au plus tôt certaines machines pour les opérations de la société, doit s'interpréter de manière à donner à cet associé un temps raisonnable pour exécuter son obligation; et que dans l'espèce, les demandeurs n'ont pas établi leur droit à des dommages.* *Pelletier & Rousseau*, 9 Q. L. R., 186 S. C., 1882.

#### AUTHORITY.

I. OF DOMINION AND LOCAL LEGISLATURES RESPECTIVELY, see LEGISLATIVE AUTHORITY.

#### AUTHORIZATION.

I. OF ATTORNEY, see AGENCY.

II. OF ATTORNEY AD LITEM, see ATTORNEY AD LITEM.

III. OF MARRIED WOMEN.

307. The petitioner, a married woman separated as to property from her husband an absentee in parts unknown, asked to be authorized to do business as a *marchande publique* and so earn a living for herself and child. Petition granted following. *I Marcadé* on C.N., 220, No. 739. *Gagnon Exp.*, 4 L. N. 108, S. C., 1881.

308. A married woman separated as to property cannot bind herself without the authorization of her husband to pay a real estate agent a commission on the sale of land for her. *Geddes & O'Reilly*, 6 L. N. 92 S. C. 1883.

309. A married woman separated as to property may without the authorization of her husband institute an action of damages for false reports published by a mercantile agency of her standing as a *marchande publique*. *Meihot & Dunn*, 12, R. L. 634, S. C. 1884.

310. And in another case. *Held* unnecessary to summon the husband for the purpose of authorization where his wife being separated as to property has been sued on a note given to her creditors for the purpose of removing an hypothec on an immoveable belonging to her, inasmuch as the signing of the note is a mere act of administration and does not require authorization. *Dudevoir & Archambault*, 12, R. L. 645 S. C. 1882.

## AUTRE FOIS ACQUIT

### I. PLEA OF.

311. Where the prisoner had been put on his trial on an indictment containing six counts charging him with shooting with intent to kill and murder, and was found guilty on the first count, which verdict was afterwards set aside on a reserved case on the ground that the indictment as far as said count on which the prisoner was tried was concerned, was bad. *Held*, that he could not be tried again on the same indictment, as all the different counts referred to the same act of shooting. Prisoner discharged on plea of "Autre fois acquit". *Regina & Bulmer*, 5 L. N. 92, Q. B. 1881.

## AVEU.

### I. DIVISIBILITY OF.

312. The admission of the defendant *sur faits et articles* which the plaintiff requires only as a commencement of proof in writing may be divided, so as to allow of parole evidence of an amount greater than that admitted, and of other amounts alleged in part to be repaid. *Motin & Fournier*, 10, Q. L. R. 129, S. C. R., 1884.

313. Action for \$300, money lent. The plea admitted the debt but set up matters in compensation and in payment. The only evidence of the loan was the admission in the plea, and of the defendant examined as a witness. In his deposition, the defendant admitted having received the \$300 as a loan, but said he had

since paid it. It was also in evidence that subsequently to these transactions, the mother of plaintiff and wife of defendant had died and a *partage* of the property of the community had been made in which the plaintiff claimed nothing on account of the loan. *Held* that when the *aveu* is coupled with a plea of compensation merely it may be divided, but when with a plea of payment merely it is undivided. Action dismissed. *Marmen & Marmen*, 10 Q. L. R. 32, S. C. 1884.

314. An admission by a defendant under oath that he received a voluntary deposit but had delivered it as requested, cannot be divided and verbal evidence is not admissible to contradict accessory statements of delivering, in a case where proof of the deposit could not be made by witnesses *Dubuque & Dubuque*, 7 L. N., 32 S. C. R., 1883.

315. Answers of a party may be divided in certain cases. The action was to recover from the defendant \$100, alleged to have been confided by plaintiff through one S. J. (since dead) to defendant, to be deposited in the Savings Bank in the name of plaintiff. The complaint was that defendant had converted this sum to his own use and paid interest on it for two years. Plea general denial. Defendant in answer to interrogatories admitted receiving the sum in question, but said that he had returned it to her save \$2, and a few cents. He admitted also that the deposit was made in his own name, as he had made them so before. Other explanations given by defendant were contradicted by other witnesses in so much that the Court was of opinion that there was no reliance to be placed on the answers of defendant, and that he had committed perjury. *Held* (following *Goudreault & Poirrot*, 13 L. C. J., 235), that the admission in such cases could be divided, and also when the statement under oath did not agree with the pleading. *Montpetit & Pelardeau*, 4 L. N., 146 S. C., 1881.

AVIS—See PROCEDURE NOTICE.

AVIS DE PARENS—See FAMILY COUNCIL.

AVOWAL—See AVEU.

## AWARD.

I. IN ARBITRATION, see ARBITRATION.



# B

## SUMMARY OF TITLES.

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## BAGGAGE—See CARRIERS.

## BAIL.

## I. RIGHT TO.

1. The prisoner was arrested under the Post Office Act, 1875 charged with having stolen a letter containing money from the Quebec Post Office. The proof showed that he had taken seven other letters as well. On application for bail—*Per curiam*: *La règle en pareille matière a été ainsi formulée par le juge Power dans la cause Exp. Maguire*: "It is laid down as law by the most distinguished judges in England that the principle upon which a party committed to take his trial for an offense may be bailed is founded chiefly upon the legal probability of his appearing to take his trial, and such probability does not in contemplation of law exist when a crime is of the highest magnitude, the evidence in support of the charge strong and the evidence the highest known to the law." *Dans l'espece actuel la preuve est positive et directe, le crime très grave, et quoique la fonction imposée par le statut ne soit pas "the highest known to the law" elle est très sévère: l'emprisonnement dans le pénitencier pour la vie ou pour pas moins de cinq ans. Huot exp., 8 Q. L. R. 28, Q. B., 1882.*

## BAIL—See LESSOR AND LESSEE.

## I. EMPHYTEUTIC.

2. Petition by the *adjudicataire* to annul a sheriff's sale to him of certain lands, on the ground that the defendant had given an emphyteutic lease of the property which was not mentioned in the announcements of sale. The lease in question provided as follows:—"The said C. L. (the defendant) did declare to have leased, demised, granted and to farm let and by these presents doth lease, demise, grant and to farm let for the space and term of fifty consecutive years which have commenced running on the 21st day of the month of September last, and which will expire on the 20th day of the month of September 1896, unto the said J. T. and J. M., junior, accepting hereof lessees, for themselves, their heirs and assigns that is to say—To have and to use, enjoy and possess the said portion of beach with all the appurtenances and dependencies thereof now leased or intended so to be unto the said J. T. and J. M., junior, their heirs or assigns, for the space and term of fifty consecutive years, subject however to the following reserves, exceptions, clauses, and conditions that is to say: 1st. That the emplacement or building lots actually leased by the said lessor to divers parties are not comprised in the present lease, and shall continue to be used and employed by the lessor as heretofore. 2nd. That a piece of ground (sequitur descriptis) is by him hereby re-

served, and shall be by him used to put fire-wood thereon, but for no other purpose whatever. 3rd. It is hereby expressly agreed by the parties that over and above the price of the present lease hereinafter stipulated, the lessor shall be entitled to have and receive from the cribs or refuse wood in the said case a sufficient quantity for heating one stove throughout every winter during the present lease. 4th. It is hereby expressly agreed by and between the said parties that the lessees shall have a right to put an end to this lease on the expiration of the first twenty-five years of its duration, upon giving notice in writing to the lessor or his heirs or assigns at the domicile hereinafter elected three months before the expiration of the twenty-fifth year of the term of this lease; upon the giving of which notice the present lease shall terminate on the 20th day of the month of September 1871 in the same manner as if it had been originally made for twenty-five years only. And lastly the present lease is thus made for and in consideration of the price or sum of twenty-five pounds current money of this province per annum, and for each year of its duration; the lessor hereby acknowledging to have received in advance in the presence of us, the said notaries, from the said lessees the sum of £25, being for the first years rent, of which the said lessees are hereby fully exonerated released and discharged and the said lessees do hereby promise and engage to continue paying the said rent in advance yearly, on the 21st day of the month of September, next year and the others on the like day in each successive year, and which rent shall be payable at the domicile herein after elected by the parties. And it is hereby specially agreed by and between the said parties that if the said lessees should neglect or refuse to pay the said rent each year in advanced they thereby lose all right to continue occupying the said beach hereby leased to them, and the present lease will thereby become null and void. And for securing the payment of the said yearly rent of £25 the said lessees do hereby specially bind and allow, mortgage and hypothecate the beach hereby leased to them and herein above designated, &c. *Held* that this was an emphyteutic lease, notwithstanding 567 C. C., as before the Code the obligation of improving the property was not an essential obligation in such a lease. *Cossett & Lemieux*, 25 L. C. J., 317, and 5 L. N. 18 S. C., 1881.

3. If an immoveable charged with an unexpired term of fifteen years of the lease above mentioned be sold by the sheriff, without mention of such charge in the minutes of seizure, and if such charge diminished the value of the property so much that it is to be presumed that the purchaser would not have bought had he been aware of it—the purchaser who is prevented by notification and protest on the part of the lessees from obtaining possession of the immoveable during such unexpired term may obtain the novation of the sheriff's sale under Art. 714 C. C. P. Ib.

4. The principal and distinguishing characteristic of an emphyteutic lease before the Code was the alienation of the property. *Ibid.*

5. Under an emphyteutic lease the lessor has not for the payment of the rent and other obligations of the lease, the privilege which he has in an ordinary lease on the moveable property found in or removed from the premises leased. *Allicot & Eastern Townships Bank*, 2 Q. B. R., 172 Q. B., 1882.

6. The action was instituted by the respondent in the Court below against one W. H., as a *saisie-gagerie par droit de suite*, to seize and attach in the hands of the Grand Trunk Railway Company certain machinery and plant of which the appellant by intervention, claimed to be the owner. The court below dismissed the intervention, and it was from this judgment that the appeal was taken. The judgment was reversed in appeal on the ground that a *saisie-gagerie* could not issue under an emphyteutic lease. *Ibid.*

7. By deed dated October 1867 one L., *auteur* of plaintiffs, declared to have leased for the term of 29 years to the defendant, &c., as lessee, his heirs and assigns a certain beach lot within the limits of the town of Levis for an annual rent of £110, besides 20 cords wood or twenty pounds in money in lieu thereof to be furnished annually at the same time as rent, and the lessee bound himself to leave at the expiration of the lease all buildings or wharves which he might have erected on the premises. L's wife appeared in the deed and renounced dower. *Held* that a lease made since the coming into force of the Code for more than a nominal rent, and containing no stipulation obliging the lessee to improve the property leased, will not be deemed to be an emphyteusis although it be for 29 years. *Credit Foncier Franco-Canadien & Young*, 9 Q. L. R. 317, S. C., 1883.

### BAILEE—See BAILMENTS.

#### I. LARCENY BY.

8. A difficulty having arisen between the shipper and the master of a vessel as to the exact quantity of goods shipped, each tendered a bill of lading in conformity with his pretensions as to the quantity of cargo received. A writ of revindication was then issued at the instance of the shipper to attach the cargo, and a guardian appointed by the sheriff. While the cargo was under seizure and in charge of the guardian the master put to sea, but was overtaken and brought back to Quebec on an accusation of larceny. *Held* that under the circumstances there was no *animus furandi*, and therefore no larceny even *custodia legis*. *Regina & Sulis*, 7 Q. L. R., 226 S. C., 1881.

### BAILIFFS.

- I. CANNOT PURCHASE LITIGIOUS RIGHTS.
- II. DUTIES OF.
- III. FEES OF.
- IV. LIABILITY OF, *see* SURETYSHIP.
- V. LIABILITY OF SURETIES OF.
- VI. MAY BE SURETIES.
- VII. POWERS OF.
- VIII. RIGHT OF ACTION AGAINST ATTORNEY FOR FEES.
- IX. SUSPENSION OF.

#### I. CANNOT PURCHASE LITIGIOUS RIGHTS.

9. Where the plaintiff, a bailiff of the Court, purchased a claim of \$200, of which there was evidence that at the time of the purchase \$100 had been paid on it at least, and there was some doubt about the balance, *Held* to be a litigious claim within the meaning of article 1485 of the Civil Code (1) and action dismissed. *Côté & Haughey*, 7 Q. L. R. 142, S. C. R., 1881.

#### II. DUTIES OF.

10. A bailiff who proceeds with a seizure and sale notwithstanding an opposition and order to suspend served upon him is liable to *contrainte par corps*. *Leroux & Deslauriers*, 4 L. N. 173 & 12 R. L., 298 S. C., 1881.

11. Where a bailiff sells goods in considerable quantities, he should give bills to the purchasers, and he has a right for the making of these bills to 10 c. per 100 words as allowed him by the tariff for law documents which he is obliged to prepare. *Whitehead v. Dubeau*, 10 Q. L. R., 162, S. C. R., 1884.

12. When a bailiff seizes property as belonging to the defendant, but which really belongs to and is in possession of another he will be held liable to the owner for the value of it. *Flagg & Vaughan*, 12 R. L., 461 Q. B., 1864.

#### III. FEES OF.

13. In an action *in forma pauperis* a bailiff cannot recover for his services, but he can recover for his disbursements and as such for the amount allowed by the tariff for mileage. *Dion & Toussaint*, 7 Q. L. R., 54 C. C., 1881.

#### IV. LIABILITY OF.

14. Action on a bail bond given to the sheriff and assigned by him to the plaintiff. The defendants when they signed the bond under Act 828 C. C. P. were bailiffs of the Superior Court. Plea that the bond was null as given

(1) Judges, advocates, attorneys, clerks, sheriffs, bailiffs and other officers connected with courts of justice cannot become buyers of litigious rights which fall under the jurisdiction of the Court in which they exercise their functions. 1485 C. C.

in violation of the Rule of Practice No. VI; that the defendant for whom the bail was given was dead, and they could not fulfil the bond in consequence, that the proceedings against the said defendant were irregular and they could avail themselves of such irregularities. The plaintiff called in the sheriff *en garantie* to defend him against the first exception as to the nullity arising from the rule of practice. The sheriff answered that by C. C. 1938 (1) the defendants could be sureties. *Per curiam*. I have no hesitation in saying that the answer of the sheriff should be maintained, and the first exception and the other exception are annulled in favor of the plaintiff whose action should be maintained. *Dupras & Sauvé*, 4 L. N. 164, S. C., 1881.

#### V. LIABILITY OF SURETIES OF.

15. The plaintiff having obtained judgment against one F., caused a writ of execution to issue against the goods and effects of the defendant. The bailiff charged with the execution having realized the amount died insolvent without having accounted. In an action against the sureties of the bailiff *Held* that the security furnished by a bailiff although stipulated in favor of Her Majesty the Queen is a direct guarantee in favor of all persons who may suffer damages by the negligence or misconduct of the bailiff in the execution of his duties, and may be exercised without a transfer of the surety bond. *Gauvreau & Lemieux*, 10 Q. L. R. 24 S. C., 1884.

16. And the difference between the surety furnished by sheriffs, and that furnished by bailiffs, is that the former gives to persons entitled to money in the sheriff's hand an action of debt for the recovery of the specific sum of money belonging to them, while the latter has recourse only by way of damages for money they are unable to recover from the bailiff. *Ib.*

17. And the fact that the amount in the bond is expressed in a foreign currency is not a cause of nullity in the bond, though contrary to the provision of the Statute 34 Vic., Chap. 4, Sec. 8. (2) *Ib.*

#### VI. MAY BE SURETIES.

18. Bailiffs who have become sureties in violation of the 6th Rule of Practice, cannot plead that rule in defence of an action against them on the bond. *Dupras & Sauvé*, 4 L. N. 164, S. C. 1881.

(1) The debtor who is bound to find a surety must offer one who has the capacity of contracting, who has sufficient property in Lower Canada to answer the obligation and whose domicile is within the limits of Canada.

(2) No other silver, copper or bronze coins than those which Her Majesty shall have caused to be struck for circulation in Canada, or in some province thereof, shall be a legal tender in Canada.

#### POWERS OF.

19. The prohibition contained in Art. 74 C. C. P. (1) applies only to cases in which bailiffs make service against their relations. *Bazin & Lacouture*, 7 L. N. 68, S. C. 1883.

#### VIII. RIGHT OF ACTION AGAINST ATTORNEY FOR FEES.

20. Action by bailiff for fees against the attorney *ad litem*. It was proved that as there were two writs, and there was another bailiff nearer the place where they were to be executed, the plaintiff had agreed with the defendant to take only half of the regular charges upon each writ. *Held* that the defendant by making this agreement and himself employing the plaintiff without expressly stipulating that he was not contracting for himself, made himself personally liable. *Panneton & Guillet*, 7 Q. L. R., 250, C. C. 1881.

#### IX SUSPENSION OF.

21. Where it appeared to the judge that a bailiff who had been examined as a witness in the cause had been tampered with and had sworn falsely and by the judgment in the case it was ordered that he be suspended from his functions as such bailiff. *Held* that he was not a party to the cause so as to inscribe in Review from such order, and the Court of Review could not consider whether his suspension had been legally ordered or not. *Hurtubise & Riendeau*, 4 L. N. 354, S. C. R. 1881.

#### BAILLEUR DE FONDS.

##### I. PRIVILEGE OF.

22. T sold to D. certain real estate on which there remained due to T. \$350. D., before registering his title from T. gave a hypothec to B. for \$85. B's hypothec was registered 10th April, 1877, and the sale to D. was registered at full length on the 6th November, 1877. *Held* that under Art. 2098 C. C. (1) the registration of D's hypothec was without effect, so long as the sale to D. had not been registered, that as the registration of T's *bailleur de fonds* claim was perfected whilst the registration of B's hypothec was still without

(1) Bailiffs cannot make services in cases in which they are interested, nor in those which concern their relations by birth or affinity, to the degree of cousin-german inclusively.

(1) So long as the right of the purchaser has not been registered all conveyances, transfers, hypothecs or real rights granted by him in respect of such immoveable are without effect. 2098. C. C.

effect, T's *bailleur de fonds* claim was in contemplation of law, registered before B's hypothec, and that T. consequently had a right to be collocated in preference to B. *Racine & Delisle* 8 Q. L. R. 135. S. C. R. 1882.

23. In another case the prothonotary collocated two creditors *pro rata*, on the principle that the title under which the property mortgaged by the defendant was acquired, was only registered after the registration of the two deeds of mortgage, viz: on the 3rd Nov. 1870; on contestation, the collocation was set aside and the report of distribution ordered to be amended on the ground that the clause in question of Art. 2098, contains only a condition suspending the right of registered creditors, and that as soon as the deed under which the mortgage property is acquired is registered, the creditors retain their right of precedence amongst themselves according to the date of the registration of their respective titles (1) *Renaud & Raymond*, 8. Q. L. R. 149. S. C. 1873.

24. In another case, however, a distinction was drawn between a conventional and a legal or judicial hypothec with respect to the application of the rule in question. In that case the opposant in 1864 ceded to the defendant an immoveable property in consideration of a life rent of \$10, representing a capital debt of \$166.67, and in April, 1873, he ceded to the defendant another immoveable in consideration of a life rent of \$6, representing a capital of \$100. Both of these transfers remained unregistered until August, 1881. At a judicial sale of the properties thus ceded to the defendant, the opposant filed his opposition *afin de charge*, asking that they be sold subject to his lien for the life rent in each case. The plaintiff contested the oppositions on the ground that the claim of the opposant remained unregistered until after the opposition had been filed, and that on the contrary, he (the plaintiff) had registered his judgment prior to the seizure. The opposant relied on the clause of the Art. 2098 (2) and cited

(1) The decisions on the interpretation of this clause of the Code are conflicting. The weight of authority however appears to be in favor of the holdings in *Racine & Delisle*, which follow *Pacaud & Constant* (II Dig. 650-51). The decisions which appear to be in conflict with them are not directly so. In *Charlebois & La Société de Construction* (II Dig. 647-34) the vendor's title had been registered by the mortgagee for the very purpose of giving effect to the mortgage, but without reference to the vendor's claim; Adam and Flanders (II Dig. 648-41) refers to a hypothec granted by the vendor and not by the purchaser; while the case of *Renaud & Raymond* in the text though apparently deciding in favor of the mortgagee, by giving to the registration of the purchaser's title a retroactive effect, does not arise in the same way, and was not evidently regarded from the same point of view. Ed.

(1) All acts *inter vivos* conveying the ownership of an immoveable must be registered at length or by memorial. In default of such registration the title of conveyance cannot be invoked against any third

*Pacaud & Constant* in support. Held dismissing the opposition and maintain the pretensions of Plaintiff, that the ruling of *Pacaud & Constant* did not apply, inasmuch as the Plaintiff's hypothec arose, from a judgment and was not covered by the terms of the article. *Vidal & Demers*. 8. Q. L. R. 177. S. C. 1881.

## BALL DRESSES.

I. NOT "ORDINARY AND NECESSARY WEARING APPAREL," See EXECUTION, EXEMPTIONS.

## BALLOTS.

I. COUNTING OF *see* ELECTION LAW.

## BANK DEPOSITS.

1. POWERS OF BANK CONCERNING *see* BANKS.

## BANKING.

I. DISCOUNTING NOTES DOES NOT CONSTITUTE

25 The plaintiff, a building Society had advanced money and in renewal of the loan and security therefor had discounted the notes on which it sued. The action was contested on the ground that the Society had no power to discount notes. The plaintiff relied upon the Act of Quebec 36 Vic. Cap 78, permitting the Society to invest its surplus funds *inter alia* in loans to persons, whether shareholders or not, and on any security, personal or real, which may be deemed sufficient to the Directors of the Society. Held reversing the judgment of the Court below that discounting notes was not engaging in banking, and was among the powers so conferred.—*La Société permanente district d'Iberville and Rossiter*, 4. L. N. 269. S. C. R., 1881.

party, who has purchased the same property from the same vendor for a valuable consideration, and whose title is registered. Registration has the same effect between two donees of the same immoveable. Every conveyance by will of an immoveable must be registered either at length or by memorial (with a declaration of the date of the death of the testator). The transmission of immoveables by succession must be registered by means of a declaration setting forth the name of the heir, his degree of relationship to the deceased, the name of the latter, the date of his death and lastly the designation of the immoveable. (So long as the right of the acquirer has not been registered, all conveyances, transfers, hypothecs or real rights granted by him in respect of such immoveable are without effect.)

## BANKS.

I. BANKING ACT AMENDED, *see* 46 VICT, CAP. 20.

II. CALLS.

III. DEPOSIT IN

IV. FORFEITURE OF SHARES IN

V. LIEN OF FOR ADVANCES

VI. LIQUIDATION OF

VII. NOT AFFECTED BY THE KNOWLEDGE OF ITS OFFICERS INDIVIDUALLY.

VIII. PETITION TO ANNUL CHARTER.

IX. RIGHTS OF ON WAREHOUSE RECEIPTS *see* WAREHOUSEMEN

X. TAX ON, *see* LEGISLATIVE AUTHORITY.

XI. WINDING UP OF WHEN INSOLVENT, C. 47 VIC. CAP. 39.

II. CALLS.

26. Action by the liquidator of the Mechanics Bank, insolvent, to recover from defendant the sum of \$7,500, being the balance due on his subscription of 50 preferential shares including the double liability. Plea that by 39 Vic. Cap. 42, Sec. 2, a by-law had to be passed authorizing the issue of the preferential stock and that no such by-law was passed, and that the Act could only have effect on acceptance by shareholders by resolution passed at a special general meeting of shareholders called for the purpose, and concurred in by at least two thirds of the holders of paid up stock present, and no such meeting was called or held; that no by-law by a qualified board of directors was ever passed authorizing the issue of the said stock; and that moreover defendant was not liable for the additional calls pretended to be due under the double liability clauses of the banking Act. *Held*, that as defendant himself had been a director and had himself authorized the issue of the shares, and had taken fifty of them and had received dividends on them, that the plea did not come with a good grace from him and must be overruled. Judgment for amount claimed. *Court & Waddell*, 4 L. N. 78. S. C. 1881.

27. Under C. 37 Vic. Cap. 5 sec 34 (Banking Act of 1871) there must be an interval of 30 days between the making of calls on the shareholders, as well as an interval of 30 days between the dates fixed for payments. *Hochelaga Bank & Robertson*, 6 L. N. 307, Q. B. 1883.

III. DEPOSITS IN.

28. Action by three persons, representatives of the late A. B. being children and grand-children both of A. B. and of the second wife of her husband. At the death of A. B. there remained as part of the property of the community certain real estate of which no *partage* was made, but the husband of A. B. held it and managed it until his death. By his will he left all his property to his second wife, and at his death she accepted

*sous bénéfice d'inventaire*. The estate turned out to be insolvent, but nevertheless the widow, with the consent of the creditors, continued to manage it without making any distinction between what property belonged to the estate of the husband and what to that of the first wife A. B. The whole money was paid into one account in the hands of appellant, amounting to \$25,000 in all, of which the respondents claimed half. The bank pleaded that the money was deposited with them as being the money of the husband's estate and the bank could only pay it out to that estate however represented; and that the heirs of the first wife had allowed the proceeds of the undivided property to be mixed up with the proceeds of the insolvent's estate, and they could not now come in and claim their money out of the assets of the estate. *Held*, reversing the judgment of the Court below, that as the moneys deposited in the bank were not deposited by or in the name of the succession or representatives of the late A. B., but by and in the name of the succession of the husband, to whom alone the bank was accountable; and as the bank had no notice of any of the said moneys being claimed by the said succession, until long after the deposits had ceased to be made, that until such notice they were entitled to treat the said moneys as belonging to the said succession, subject to the claim of the said bank, and of the creditors of the estate of the husband. *Banque Jacques-Cartier & Giralde*, 26 L. C. J. 110, Q. B. 1882.

IV. FORFEITURE OF SHARES IN.

29. Shares in Banks cannot be forfeited for non payment of calls without a formal notice to that effect. *Robertson & Hochelaga Bank*, 4 L. N. 315, S. C. 1881.

V. LIEN OF FOR ADVANCES.

30. Banks cannot acquire a lien on logs under 34 Vic. Cap. 5, S. S. 46 & 47 (1) if the

(1) The Bank may acquire and hold any cove receipt or any receipt by a cove keeper, or by the keeper of any wharf, yard, harbor or other place, any bill of lading, any specification of timber or any receipt given for cereal grains, goods, wares or merchandises stored or deposited in any cove, wharf, yard, harbor, warehouse, mill, or other place in Canada, or shipped in any vessel, or delivered to any carrier for carriage from any place whatever, to any part of this Dominion, or through the same or on the waters bordering thereon, or from the same to any other place whatsoever, and whether such cereal grains are to be delivered upon such receipt in species or converted into flour, as collateral security for the due payment of any bill of exchange or note discounted by such bank, in the regular course of its bankings business, or for any debt which may become due to the bank under any credit opened or liability incurred by the bank for or on behalf of the holder or owner of any such bill of lading, specification or receipt, or for any other debt to become due to the bank and such bill of lading specification or receipt being

pledge of the logs was made for a previous indebtedness, or if they were not held by virtue of a transfer of a receipt by a cove keeper, or by the keeper of any wharf, yard, harbor or any other place in Canada within the meaning of said Act. *Ross & Molson's Bank*, 2 Q. B. R. 82. Q. B. 1881.

#### VI. LIQUIDATION OF

31. In two cases the respondent, plaintiff in the Court below, sued the petitioner defendants in the Court below, who was alleged to be debtor of the Bank. The declaration alleged the insolvency of the Exchange Bank and its liquidation under the Statute of Canada, 45 Vic. Cap. 23, the indebtedness of the petitioners, with conclusions accordingly. The petitioners pleaded dilatory exceptions on the ground, that, if true as alleged in the declaration, they were "contributories" they were so under the Statute, and before any suit could be taken against them they must be settled on the list of contributories to the Bank as provided in the act. Admissions were filed that the petitioners were not settled on any list of contributories. Held not necessary and exceptions dismissed. *Acer & Exchange Bank*, 7 L. N. 346, Q. B. 1884.

#### VII. NOT AFFECTED BY THE KNOWLEDGE OF ITS OFFICERS INDIVIDUALLY.

32. To an action on a cheque the defendant pleaded *inter alia* that the cheque was given as a compromise of a criminal prosecution brought against defendant and six other Directors of the consolidated Bank for making false and fraudulent returns; that the bank paid the money to one M. and his solicitor who were bringing the prosecution,

so acquired, shall vest in the bank from the date of the acquisition thereof, and all the right and title of the last previous holder thereof, and if such holder be the agent of the owner, within the meaning of the fifty-ninth chapter of the Consolidated Statutes of the late Province of Canada, then all the right and title of the owner thereof to or in such cereal grains, goods, wares or merchandise, subject to his right to have the same re-transferred to him, if such bill, note or debt be paid when due, and in the event of non payment of such bill, note or debt when due, such bank may sell the said cereal grains, goods, wares or merchandise and retain the net proceeds, or much thereof as will be equal to the amount due to the bank upon such bill, debt or note, with interest and costs, returning the overplus, if any, to the person from whom such instrument was acquired by the Bank. 34 Vic. Cap. 5. S. 46.

No transfer of any such bill of lading, specification of timber or receipt shall be made under this Act to secure the payment of any bill, note or debt, unless such bill, note or debt be negotiated or contracted at the time of the acquisition thereof by the bank, or upon the understanding that such bill of lading, specification of timber or receipt would be transferred to the bank, but such bill note or debt may be renewed, or the time of the payment thereof extended without affecting such security. S. 47.

and that this took place with the full knowledge of the bank of all the facts and that therefore the cheque was illegal and they could not recover on it. The court found that the money was paid under the circumstances above stated, but that the bank had no knowledge of the alleged compromise as the personal knowledge of the President could not be opposed to the bank, and the bank was not bound by the acts of the president in his individual capacity, and therefore had no cognizance of the pretended compromise at the time the money was paid. *Bank of Montreal & Rankin* 4. L. N. 302, S. C., 1881.

#### VIII. PETITION TO ANNUL CHARTER.

33. On the question of *scire facias*, and proceedings against a corporation for forfeiture of its charter, see the arguments and decision of the Attorney General of Canada in the case of *Sorasin & St. Hyacinthe*, 28. L. C. J. 270. 1881.

#### IX. RIGHTS OF, ON WAREHOUSE RECEIPTS.

34. The Bank Appellant held two warehouse receipts granted by the insolvent to the Mechanic's Bank, and transferred to Appellants. The validity of one of the receipts was contested on the ground that it appeared that the receipt was given by the insolvent, that he was not a warehouseman and could not give such a receipt and keep possession of the goods. Held that by the statute 34 Vict. C. 5. S. 48., the owner of goods giving a warehouse receipt as warehouseman is put in the same position as any other warehouseman, and that under Sec. 50, the bank does not forfeit its right of pledge by not selling the goods within six months. *Molsons Bank & Lanaud*. 5 L. N. 263 & 2. Q. B. R. 182. Q. B. 1881.

#### X. TAX ON.

35. By the Act 45 Vict. (Q) Chap. 22, "to provide for the exigencies of the public service of the Province of Quebec," a tax was imposed on every bank, insurance company, and other commercial corporation, doing business in the Province. The tax was imposed in proportion to the paid up capital of the banks, together with a tax on each office, etc. Some of the Corporations interested in the cases here determined have their principal offices out of the Province, and some were incorporated in England and some in the United States. In some cases the stock is held chiefly by persons not resident in the Province of Quebec. Held by the majority of the Court confirming the judgment of the Superior Court M. L. R. 1 S. C. 32 :—That the taxes imposed on Corporations by the Act in questions are personal and direct taxes within the province and such as are authorized by sect. 92. sub-sect. 2 of the B. N. A. Act 1867. A corporation

doing business in the Province, is subject to taxation under Sec. 92 sub-sect. 2, though all the shareholders are domiciled out of the Province, and that even assuming that the taxes in question should be considered as not falling within the denomination of direct taxes, the local legislature had power to impose the same, inasmuch as they were matters of a merely local or private nature in the Province, within the meaning of the B. N. A. Act Sect. 92. sub-sect. 16. *The North British & Mercantile Fire & Life Ins. Co. & Lambe.* 1. M. L. R. 122. Q. B. 1883.

XI. WINDING UP OF WHEN INSOLVENT, *see* C. 45 VIC. CAP. 23, & C. 46 VIC. CAP. 23, & C. 47 VIC. CAP. 39.

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### BAR.

I. ACT RESPECTING AMENDED, *see* Q. 47 VIC. CAP. 32.

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BARGAIN AND SALE—*See* CONTRACTS, SALE, &c.

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BARGES—*See* MERCHANT SHIPPING.

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BASTARDS—*See* ILLEGITIMATE CHILDREN.

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BATIMENTS—*See* SHIPS, MERCHANT SHIPPING.

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BEACHES—*See* RIVER BEACHES.

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### BEE T ROOTS.

I. CULTIVATION OF, *see* Q. 47 VIC., CAP. 26.

II. SUBSIDY FOR CULTIVATION OF, *see* Q. 45 VIC., CAP. 25.

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BENEFIT OF INVENTORY—*See* SUCCESSION.

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### BENEFIT SOCIETIES.

I. FORMATION OF.

II. POWERS OF.

#### I. FORMATION OF.

Whereas the proper working of chap. 71 of the Consolidated Statutes of Canada, intituled: "An Act respecting Charitable, Philanthropic and Provident Associations," amended by the Act of this provincial legislature 32 Victoria, chap. 43, and the happy application of the beneficent efforts of such legislation have shown the propriety of extending it to other analogous objects in this Province; Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

I. Section 1 of the said chapter 71 of the Consolidated Statutes of Canada, and section 1 of the said Act 32 Victoria, chap. 43 are consolidated into one section, which shall read as follows:

"I. Any number of persons may unite themselves into a society in this province, with a view by means of voluntary contributions, subscriptions, gifts or donations from the members of the Society or from the public, of making provision for those afflicted by sickness, reverses of fortune and death, the widows and orphans, or the lawful representatives of deceased members, for the rescue and reformation of fallen women, and for the prevention of cruelty to women and children, and for the purpose of attaining any other analogous object." Q. 45 Vict., Chap. 37.

#### II. POWERS OF.

36. Benefit societies organized under C. 71, C. S. C., must restrain their operations to those provided by the Statute. *Metropolitan Benefit Society v. Dugre.* 11. R. L. 344, C. C. 1882.

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### BEQUESTS.

I. RIGHTS CONCERNING, *see* ALIMENTS, LEGACIES, WILLS, &c.

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BETS—*See* GAMBLING TRANSACTIONS.

#### I. SEIZURE OF MONEY DUE FOR.

37. A judgment creditor has the right to seize in the hands of third parties the amount of bets which they have lost to the defendant on a horse race and which they are ready and willing to pay. *McGibbon & Brand,* 7 L. N., 228 S. C., 1884.

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BIDS—*See* SALE.

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BIDDING—*See* SALE, JUDICIAL.

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BIGAMY—*See* CRIMINAL LAW.



**BILAN.**

I. IN CASES OF *CAPIAS*, *see* *CAPIAS*, DECLARATION OF ABANDONMENT.

**BILLETS—See BILLS OF EXCHANGE****BILLS OF EXCHANGE AND PROMISSORY NOTES.**

- I. ACCOMMODATION PAPER.
- II. ACTION ON.
- III. ALTERATION OF.
- IV. BY CORPORATIONS.
- V. CHEQUES.
- VI. COMPOSITION NOTES.
- VII. CONSIDERATION FOR.
- VIII. ENDORSEMENT.
- IX. LIABILITY OF ENDORSERS.
- X. MATURED BY INSOLVENCY, *see* *INSOLVENCY* WHAT CONSTITUTES.
- XI. MATURITY OF.
- XII. NULLITIES IN.
- XIII. OBTAINED BY FRAUD.
- XIV. PRESENTATION OF.
- XV. PROOF IN MATTERS OF.
- XVI. PROTEST OF.
- XVII. RIGHTS OF THIRD HOLDER.
- XVIII. RIGHTS OF TRANSFERRE.
- XIX. STAMPS.
- XX. STAMP DUTY REPEALED *see* C. 46 VIC., CAP. 21.
- XXI. VALUE RECEIVED.
- XXII. WHAT ARE.

**I. ACCOMMODATION PAPER**

38. Action by respondent against the maker of a promissory note for \$650 at four months payable to the order of J. S. and endorsed by S. to the bank. Plea that this note was made by him for the accommodation of S. that he never had any value for it, with that S. promised him, the defendant that he would pay it, and that he, defendant, would not be troubled about it. *Held* that the contract expressed on the face of a negotiable instrument cannot be varied without an express agreement. Knowledge that the parties to a note occupy between themselves a relation different from that expressed on the face of the note, is not sufficient to alter their relations to a third party having such knowledge. *Scott & Quebec Bank*. 7 L. N. 343, Q. B. 1884.

**II. ACTION ON**

39. To an action on his promissory note the maker pleaded that he had sent the money to the endorser when it was made payable, before maturity; that he had made other notes to the order of the same person

and sent the money in that way, and they were always retired; that when the present note fell due there was money enough at the endorser's credit in the plaintiff's hands to pay it and it was actually paid, though not withdrawn. The endorser subsequently assigned. *Held* that there was nothing proved in the way of payment to the Bank and the payment to the endorser was no answer. *Banque du Peuple & Viau*. 4 L. N. 133 S. C., 1880.

40. The case came up on the merits of an exception declinatory by M., living in the District of Richelieu. He pleaded that his co-defendant had no interest in the case, and he was only summoned in order to give the Court jurisdiction at Montreal. The action was against M., maker, and P., endorser, of a note. P. did not receive notice of protest for non-payment, but it was alleged that he had waived protest. The evidence, however, was to the effect that P. had not waived protest, and therefore was not liable. The court was of opinion that the action had been taken against P. solely in order to withdraw the defendant M. from his natural judge, and the ordinary rule which would allow M. to be sued out of his own district (C. C. P., 38) did not apply. His Honour referred to Gilbert, *Procédure Civile*, Art. 59, p. 65. N. 81 (Code Nap.) The exception was, therefore, maintained. *Baxter & Martin*, 7 L. N. 78, S. C. 1882.

41. Action for the recovery of the amount of a promissory note for goods sold and delivered to the defendant in the United States. *Per curiam*. The defendant demurs to the action on the ground that it is not alleged that the note was duly stamped; that a demand of payment was made, and other reasons. It is alleged that the note was made and delivered conformably to the laws of the place where it was made, and this is sufficient. It is also alleged in the declaration that by the law of the State of Massachusetts, it is not necessary to present a promissory note for payment, and that the maker may be sued without presentment, and the court holds that the allegations of the declaration are sufficient and dismisses the demurrer with costs. *Beebe & Mahon*. S. C., 1884.

**III. ALTERATION OF.**

42. Case of *La Banque Ville-Marie & Primeau*. (II. Dig. 108-45,) reported in *extenso* 4 L. N. 19. 26 L. C. J. 20. Q. B. 1880.

43. Action for the recovery back of a sum of money paid to the bank by the plaintiffs, drawers of a bill dated Montreal upon one B. in Ontario, which bill the Bank discounted for the plaintiffs in March 1877. *Held* that when a bill has been accepted and delivered to the holder, the date of acceptance cannot be altered without the consent of all the parties to the bills. *Ogilvie & Quebec Bank*, 5 L. N. 183. S. C. 1882.

**IV. BY CORPORATION.**

44. Case of *Mechanic's Bank & Bramley*, (11 Dig. 109-51) reported in full 25 L. C.J. 256, Q. B. 1879.

45. Action on a promissory note against an incorporated company, the note being alleged to be made by and through the manager and the President of the Company. The defendants pleaded the general issue unaccompanied by affidavit. At the Enquete the defendants did not appear, the plaintiff made no enquete, and judgment was rendered on the note. In review *Per Curiam*.—It is quite true that without an affidavit as required by Art. 143, C. C. P., the defendants could not put in issue the genuineness of the note or of the signatures thereto, but no affidavit is required to the denial of the quality of the person signing or making a promissory note in the name of an incorporated company, or to the denial of the alleged fact that these persons were duly authorized to sign promissory notes for the Company. It was therefore incumbent upon the plaintiff under the general issue to prove that J. C. was the manager, and T. M. the President of the St. Lawrence Steam Navigation Co., and that these two persons were legally authorized to make the said note. This proof was all the more necessary owing to the special terms of the Statute of Canada (1875) 38 Vic. Cap. 87, which requires that promissory notes to be binding upon the Company, shall be made by some officer, agent or servant of the Company, in accordance with some resolution or regulation and within the powers of such officer, agent or servant under the by-laws of the Company. *Delaney & St. Lawrence Steam Navigation Co.* 8, Q. L. R. 29, S. C. R. 1882.

46. In an action on a note signed by the President of a Company the proof is on the Company to disprove the authority of the President. *Price & Mortow Dairy Farming Co.* 6 L. N. 171. S. C. R. 1883.

**V. CHEQUES.**

47. Where to an action on a cheque the defendant pleaded *inter alia* that the order in question was not really a cheque, not being against money on deposit, but an overdraft or advance made by the bank.—*Held* that it was nevertheless a cheque. *Bank of Montreal & Rankin* 4 L. N. 302, S. C. 1881.

48. Defendant H. gave to the other defendant C. a cheque for \$75 on the Union Bank of Lower Canada. C. endorsed it over to plaintiff who did not present it, until some twelve days after its date, when it was refused for want of funds. Some days afterwards it was presented again with the same result and protested for non payment. H. then had left the country. On action against C.—*Held* that defendant was liberated by want of diligence

in presenting the cheque and also by want of notice of the protest. *Lord & Hunter*, 6 L. N. 310 C. C. 1883.

**VI. COMPOSITION NOTES.**

49. The endorser of composition notes is not discharged by the mere fact that the compounding creditors have secretly stipulated with the debtor that he shall pay them an amount in excess of the composition rate as the condition of their consent to the composition, and especially where the endorser as the consideration of his endorsement, obtained a transfer of the insolvents entire stock in trade and assets which he still retained when sued on the composition notes; but the endorser is entitled to a reduction of all sums that the creditor has received in excess of the composition notes. *Martin & Poulin*, 4. L. N. 20, & 1 Q. B. R. 75. Q. B. 1880.

**VII. CONSIDERATION FOR.**

50. Appellant, assignee to the insolvent estate of one B. sold the stock in trade to his own father who paid part cash and gave a note of the insolvent for the balance. *Held* that the stock in trade was good consideration for the note, and in any case the respondent, who represented her deceased husband, the insolvent, could not refuse to pay the note without returning the goods. *Lemieux & Bourassa*, 1 Q. B. R. 305. Q. B. 1881.

51. It is not necessary for the person producing a bill or note to prove consideration if the instrument contains the words "value received," unless fraud be alleged and proved by the defendant. *Waters & Mahan*, 6 L. N. 316 S. C. R. 1883.

**VII. ENDORSEMENT.**

52. Although it is the rule that the responsibility of endorsers of a negotiable instrument is according to the order of their endorsement, this rule is not invariable and it may be shown by ordinary proof that the endorsements occurred in such order by mistake, or that there was an understanding between the endorsers that their liability would not follow the order of endorsement. *Léveillé & Daigle*, 2, Q. B. R. 129. Q. B. 1880.

53. G. who was not a party to the note in question, got it into his possession before maturity, as collateral security. The payee subsequently became insolvent, and G. before maturity of the note, obtained from the assignee a transfer of all the insolvent's assets. *Held*, that G. might sue the maker on the instrument though not endorsed, and where there is conflict of evidence on the question whether a security has or has not been satisfied by payment, the possession of the uncancelled security by the claimant ought to turn the scale in his favor. *Guerin & Orr*, 5 L. N. 379, S. C. R. 1882.

## VIII. LIABILITY OF ENDORSERS.

54. The defendant endorser, being sued on a promissory note, pleaded that he had endorsed for credit, and that the plaintiff (a subsequent endorser) had guaranteed the prior endorser that he would see the note paid. *Held* not proved, it appearing, among other things, that the defendant had by a letter to plaintiff personally guaranteed due payment of the note in question. *Willett & Court*, 6 L. N. 204, Q. B. 1883.

55. Where several persons mutually agree to give their endorsements on a bill or note as co-sureties for the holder, who wishes to discount, they are entitled and liable to equal contribution *inter se* irrespective of the order of their endorsements. *Macdonald & Whitfield*, 6 L. N. 278, P. C. 1883.

56. Appellant and respondent were, in the year 1875, directors of a trading corporation known at the St John's Stone China Ware Co. which carried on business at St John in the district of Iberville. The Company, at that time owed the Merchants Bank of Canada upwards of \$17,000. The appellant was president and had endorsed the Company's promissory notes for its accommodation to the Merchants Bank to the amount of \$65,000 besides giving his personal guarantee to the bank for overdrafts of the Company, on account current to the extent of \$10,000. The Company, at this juncture being in want of further funds applied to the bank through the appellant and received a written answer in the following terms:—"Dear Sir. Respecting your President's application to the Bank for further extension of your credit, I have the pleasure to inform you that you have been allowed an extension of four or five thousand dollars in case of need. The bank however requires that the present advances as they mature be secured by the personal guarantee of your directors, should renewals be required, which could be done by their endorsement of the notes. Your account current is now overdrawn \$17,614.54 and by giving me the Company's note endorsed as required for \$8,500 you will reduce your overdrawn account leaving a balance of \$700, of above loan. I enclose a letter of guarantee along with a note for signature by your directors as required by the bank to take the place of M. & N.'s (the presidents) security for the like amount." The note was a demand note for \$10,000 and was referred to in the letter of guarantee as being deposited as collateral security for overdraft of a similar amount and was to be endorsed by the directors individually. On the 5th August, the directors held a meeting and agreed to give the personal endorsement asked for by the bank, and the secretary was instructed to have the notes drawn out signed as required and handed over to the bank. The secretary accordingly drew out two notes for \$8,500 and 4,500 respectively, which he signed as promisor on

behalf of the Company, the name of the appellant being inserted as payee, just as it had been in the handed note for \$10,000 sent by the bank. Both the demand note and the two notes just mentioned were endorsed first by the appellant, then by the respondent, and in turn by some of the other directors. The two notes were subsequently renewed, and on the 27th December 1877, the bank instituted action on them against appellant, respondent and one of the other directors on the whole three notes for balance due. The respondent alone appeared and defended the action; and further on the 7th January 1878 availing himself of the provisions of Article 1953 of the Civil Code (1) brought an action *en garantie* before the same Court against the appellant asking to have the appellant condemned to acquit and relieve him of any sum of principal and interest for which judgment might be given against him at the suit of the bank. *Held* (reversing the judgment of the Court of Appeal (2)) that as the Civil Code of Lower Canada makes no express provision for such a case it must be decided according to the law of England in force on the 30th May 1849, and by that law the endorers were co-sureties and not liable to guarantee to each other in the manner pretended by respondent. *Macdonald & Whitfield*, 27 L. C. J. 165. P. C. 1883.

## X. MATURED BY INSOLVENCY.

57. Action upon a promissory note dated 1st September 1881, and payable at six months, due 4th March 1882. The Plaintiff alleged the insolvency of the defendants and contended that in consequence they could not obtain the benefit of the term. *Held*, that a Company ceasing to meet its ordinary payments as they become due, though its nominal assets may be equal to its liabilities will be deemed insolvent, and cannot claim the benefit upon a promissory note not yet become due. *Corcoran & Montreal Abattoir Co.* 6. L. N. 135, S. C. 1882.

## XI. MATURITY OF.

58. An action on a promissory note instituted on the afternoon of the third day of grace is not premature. *Ontario Bank & Foster*. 6 L. N. not 398. S. C. 1883.

(1) The surety who has bound himself with the consent of the debtor, may even before paying, proceed against the latter to be indemnified: When he is sued for the payment; when the debtor becomes bankrupt or insolvent; when the debtor has obliged himself to effect his discharge within a certain time; when the debt becomes payable by the expiration of the stipulated term without regard to the delay given by the creditor to the debtor without the consent of the surety; After ten years when the term of the principal obligation is not fixed, unless the principal obligation such as that of a tutor, is of a nature not to be discharged before a determinate period.

(2) 26 L. C. J. 69 & 2 Q. B. R. 157.

## XII. NULLITIES IN.

59. When a promissory note is obtained by fraud and false representations, the third holder of such a note cannot recover such amount when it is proved that when he received it, he was aware of the fraud and gave no consideration for the note. *Belanger & Baxter*, 12 R. L. 532. Q. B. 1883.

## XIII. OBTAINED BY FRAUD.

60. Where the transfer of a note by endorsement is made before maturity, but the evidence shows that the note was obtained from the maker by fraud, and that the holder was aware of the fraud, the case does not come within the rule laid down in C. C. 2287 (1); the onus of showing that he is in good faith falls upon the holder. *Belanger & Baxter*, 6 L. N. 413. Q. B. 1883.

## XIV. PRESCRIPTION OF.

61. The prescription of a promissory note does not commence to run until after the expiration of the last day of grace. *Ste. Marie & Stone*, 5 L. N. 322. Q. B. 1882.

## XV. PRESENTATION OF.

62. The defendant made a promissory note for \$100 to the order of plaintiff and payable at his (plaintiff's) office. Being unpaid plaintiff took action on it, and in the declaration referred to it merely as follows: "*Le demandeur réclame du défendeur la somme de cent piastres qu'il lui doit pour le montant du billet ci-produit, fait, etc.*" Demurrer that the note was payable at a place indicated and the plaintiff not having alleged presentation there for payment the action would not lie. In the court of first instance demurrer maintained, but in review this judgment was reversed on the ground that presentation was not necessary as against the acceptor, drawer, or maker unless pleaded and proved that there was provision at the place named to meet the note when it became due, and that it would have been paid if presented (2) *Crepeau & Moore*, 8, Q. L. R. 197. S. C. R. 1882.

(1) The transfer of a bill by indorsement may be made, either before or after it becomes due. In the former case, the holder acquires a perfect title free from all liabilities and objections which any party may have had against it in the hands of the indorser, in the latter case, the bill is subject to such liabilities and objections in the same manner as it were in the hands of the previous holder 2287. C. C.

(2) In the case of promissory notes or bills of exchange they are presumed as against the maker or acceptor to have been presented at that place at maturity, unless the exception formed upon such want of presentation is accompanied by an affidavit that at the time they became due provision had been made for their payment at the specified place. 145 C. C. P.

## XVI. PROOF OF SIGNATURE.

63. Case of *Paige & Ponton*. (II. Dig. 116-83) reported at length 26 L. C. J. 155, Q. B. 1877.

## XVII. PROOF IN MATTERS OF.

64. Les présomptions reconnues le 30 mars 1849 comme preuves dans le droit anglais reçoivent leur application dans l'enquête des faits sur action pour le recouvrement de billets promissaires. *Baxter & Bilodeau*, 9. Q. L. R. 268. S. C. 1883.

## XVIII. PROTEST OF

65. To an action on a promissory note the endorser pleaded that he owed nothing to plaintiff and that he was not bound in law or in fact to pay the sum claimed; that plaintiff (a third holder) was the *prête nom* of the payee &c., and at the hearing urged that no protest and notice had been made and given as required. The fact was that the note though made in Montreal was payable in New York, and the last day of grace falling on Sunday it had been protested on the Saturday previous, according to the custom of that state. Held that everything concerning the payment of the note and the mode of securing must be made according to the law of the country, where the note is payable, and therefore the protest and notice were sufficient. *Bank of America & Copland*. 4. L. N. 154, S. C., 1881.

## XIX. RIGHTS OF THIRD HOLDER

66. Plaintiff, an innocent third holder for value, sued on a note purporting to be signed by defendant. The signature however was not written by him but by his daughter in law. The evidence however showed that the proper was blank when signed, and the signature was written merely as the address of the defendant. Held that the plaintiff could not recover on it and action dismissed. *Waters & St. Onge*. S. C., 1884.

## XX. RIGHTS OF TRANSFEREE.

67. Les objections qui peuvent être opposées au preneur d'un billet promissaire, peuvent aussi être à son cessionnaire avant échéance, si celui-ci n'est pas de bonne foi et n'a pas fourni valeur. *Baxter & Bilodeau*, 9. Q. L. R. 268, S. C. 1884.

68. Defendant was sued on a promissory note and pleaded that the note had been made by him in favor of a commercial firm since insolvent, that it had passed into the hands of the assignees of the said firm, that it did not appear that the insolvent had ever legally recovered possession of it and that the plaintiff had no interest but was merely *prête nom* for the creditors to whom it belonged. Held that the defendant could not

plead the rights of the creditors but was bound to pay the amount of the note to the holder. *Lemay & Boissinot*, 10 Q. L. R. 90, S. C., 1883.

#### XXI. SIGNED WITH MARK.

69. To an action on a note signed with a X the defendant first pleaded forgery but was afterwards allowed to amend this and plead that he had made the mark under the impression that he was signing a receipt for a like amount. On proof of amended plea action dismissed. *Benoit & Brais*, 6 L. N., 342 Q. B., 1883.

#### XX. STAMPS.

70. In an action on a promissory note *Held* Que l'acte 45 Vict. (1882), ch. 1, n'a pas entièrement enlevé le privilège, que l'acte qu'il a rappelé accordait au porteur, de rendre effectif, en apposant des timbres au montant du double droit, un billet qui n'avait pas été revêtu des timbres requis ; mais qu'il n'était conserve qu'au porteur, à la date de sa sanction, et non à celui qui l'avait acquis depuis ; et que l'acte 45 Vict. (1883), ch. 22 a rétabli ce privilège tel qu'il existait auparavant, mais qu'il ne peut, comme avant l'acte de 1882, être exercé, dans une instance, qu'immédiatement après que le vice de l'apposition des timbres a été indiqué, à moins que le retard ne soit expliqué et justifié sous serment. *Baxter & Doiron & Baxter & Hall*, 9 Q. L. R., 174, S. C., 1883.

71. L'apposition des doubles timbres sur un billet, pendant l'instance, n'a d'effet qu'à la condition qu'ils paraissent y avoir été mis aussitôt que le vice qu'affectait le premier timbre a été découvert. *Baxter & Bilodeau*, 9 Q. L. R., 268 S. C., 1883.

72. No affidavit is required for the mere allegation that what is written over the stamp is not true. *La Banque Jacques-Cartier & Cote*, 9 Q. L. R., 139 S. C., 1883.

73. The question was whether since the Act 45 Vict., cap. 1, the holder of a note insufficiently stamped, on which suit is pending, has the right (which existed before the repealing Act was passed) of affixing the required stamps, by permission of the Court. *Held* that the right of the holder in good faith to apply to the Court for leave to affix the required amount of stamps to a note on which suit is pending, is not affected (as to a note made before the repeal of the duty) by the Act 45 Vict., cap. 1. *Dixon & Normandeau*, 6 L. N., 136 S. C., 1883. But *held* in contrary sense, *Filion & Roy*, 6 L. N. 175 S. C., 1883.

#### XXI. STAMP DUTY REPEALED.

In any suit or proceedings at law or in equity now pending hereafter or to be commenced the Court or Judge may admit in evidence as a valid instrument, any promissory note or bill of exchange unstamped or insufficiently stamped made out or

drawn prior to the fourth of March in the year of our Lord, one thousand eight hundred and eighty two, without the payment of the double duty as required by the thirteenth sections of the act passed in the forty second year of the reign of Her present Majesty, intituled "An Act to amend and consolidate the laws respecting duties imposed on promissory notes and bills of exchange. provided always, that it is proved and shown to the satisfaction of the Court or Judge that the circumstances are such as would have entitled the holder thereof previous to the said fourth day of March to make it valid under the provisions of the said section by affixing stamps representing the double duty ; and provided also that nothing in this Act, nor anything done under it, shall relieve the person who ought to have affixed the proper stamp or stamps from any penalty incurred in consequence of his neglect to affix the same.

In any action or suit now pending in which but for this Act the defendant could have succeeded, the defendant shall nevertheless be entitled to the costs of the same on any plea in which the validity of the bill or promissory note not having been properly stamped under the Act in the next preceding section cited. C. 46 Vict. Cap 21 Secs 1 and 2.

#### XX. VALUE RECEIVED *see* CONSIDERATION FOR.

74. La présomption résultant de l'insertion dans le billet, des mots *valeur reçue*, est non seulement détruite par la preuve que le preneur a obtenu le billet par fraude, mais que cette preuve en crée une que le cessionnaire n'a pas fourni valeur et n'est pas propriétaire. *Baxter & Bilodeau*, 9 Q. L. R. 268. S. C. 1883.

#### XXI. WHAT ARE.

75. The 17th November, 1879, T. B. master of a vessel called the "America" gave to one of the seamen an advance note under C. 36 Vic. Cap. 129, Sec. 30, addressed to the defendants the owners of the vessel as follows. "Five days after the final sailing of the ship "America" from the harbor of Quebec, "with F. B. (the seamen) on board pay to the "order of the above named Seaman or bearer, "the sum of thirteen dollars lawful current "money of Canada & charge the same to the "account of T. B." F. B. the payee endorsed this order in bank and transferred it to plaintiff. To an action on the note the defendants pleaded that it was not transferable by endorsement, and further that the seamen having deserted there was no consideration. *Held* that the document was neither a bill, note or cheque, but was nevertheless transferable under the last clause of Art. 1573 C. C. (1)

(1) The two last preceding articles do not apply to bills, notes or bank checks payable to order or to bearer; no signification of the transfer of them being necessary ; nor to debentures for the payment of money ; nor to transfers of shares in the capital stock of incorporated companies, which are regulated by the respective acts of incorporation or the by-laws of such companies. Notes for the delivery of grain or other things, or for the payment of money and payable to order or to bearer, may be transferred by endorsement or delivery, without notice, whether they are payable absolutely or subject to a condition.

and was properly transferred by endorsement as had been done; but not being a note or cheque it was not free from the objections which might be raised against it in the hands of the payee, and as there was proof that the payee had left the ship six days after sailing there was no consideration and the holder could not recover. *Duchaine & Maguire*, 8 Q. L. R. 295, C.C. 1882.

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**BILLS OF LADING—See AFFREIGHTMENT.**

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**BILLS OF SALE—See SALE.**

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**BIRTH.**

**I. OF CHILDREN, see CHILDREN.**

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**BOARDING HOUSE KEEPERS—See HOTEL KEEPERS.**

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**BOARD OF REVISORS.**

**I. POWER OF CORPORATION TO REMOVE MEMBERS, see MUNICIPAL CORPORATIONS.**

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**BOARD OF TEMPORALITIES OF THE PRESBYTERIAN CHURCH.**

**I. ACTS OF, see LEGISLATIVE AUTHORITY, DIVISION OF.**

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**BONDED WAREHOUSES.**

**I. NOT EXEMPT FROM MUNICIPAL TAXES.**

76. Where the Corporation of Quebec sued for taxes and the Crown intervened as tenant, the premises in question being used as a bonded warehouse, and claimed that they were not liable for taxes, the intervention was dismissed on the ground that the premises did not come under any exception to which the Crown was entitled under 23 Vic., Cap. 61, Sec. 58, and even if they did that would not exempt the proprietor. *Corporation of Quebec & Langcraft*, 7 Q. L. R. 56 S. C., 1881.

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**BONDS.**

**I. POSSESSION OF COUPONS DURING LITIGATION.  
II. RETURN OF WHEN DEPOSITED AS COLLATERAL, see COLLATERAL SECURITY.**

**I. POSSESSION OF COUPONS DURING LITIGATION.**

77. On motion of the owner of bonds with coupons attached the Court will order such of the coupons as are not in litigation in the appeal to be detached by the clerk of the Court and delivered over to the party moving. *Montreal, Portland & Boston Railway Co. & Hochelaga Bank*, 27 L. C. J. 164, Q. B., 1883.

**II. RETURN OF WHEN DEPOSITED AS COLLATERAL SECURITY.**

78. When a person with whom bonds have been deposited as collateral security is in default to return them, he is liable for the par value of such bonds. *Paute & Senecal*, 7 L. N. 30, S. C., 1884.

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**BONDSMEN—See BAIL, SURETY-SHIP, &c.**

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**BONS—See BILLS OF EXCHANGE, &c.**

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**BOOKS.**

**I. OF MUNICIPALITY MUST BE DELIVERED UP BY SECRETARY UNDER PENALTY, see MUNICIPAL CORPORATIONS.**

**II. OF JOINT STOCK CO. MUST BE OPEN TO INSPECTION, see COMPANIES.**

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**BOOK DEBTS.**

**I. SALE OF, see INSOLVENCY.**

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**BOOMS.**

**I. ACT RESPECTING CONSTRUCTION OF, IN NAVIGABLE WATERS, see C. 46 VIC., CAPS. 43 & 44.**

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**BORNAGE—See ACTION, BOUNDARIES, &c.**

**I. COSTS OF, see COSTS.**

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**BOUNDARIES.**

**I. ACTION TO ESTABLISH, see ACTION BY BORNAGE.**

**II. RIGHTS OF NEIGHBORING PROPRIETORS.**

79. No action will lie for wood cut on the boundaries of a neighbouring property until

the boundaries have been fixed and determined in a legal manner, between the two. *Véroneau & Perry*, 28 L. C. J. 253, S. C., 1872.

## BREACH.

I. OF CONTRACT *see* CONTRACT.

## BREF.

D'ASSIGNATION *see* PROCEDURE, WRITS.

## BRIBERY.

IN ELECTION MATTERS *see* ELECTION LAW, MUNICIPAL CORPORATIONS.

## BRIDGES *see* TOLL BRIDGES.

I. ACT TO AMEND THE LAW CONCERNING CONSTRUCTION OF IN NAVIGABLE WATERS *see* C. 48-49 VICT. CAP. 6.

II. JURISDICTION CONCERNING *see* JURISDICTION.

III. LIABILITY FOR COST OF REPAIRING *see* MUNICIPAL CORPORATIONS.

### II. JURISDICTION OF

80. Le juge des Sessions de la Paix pour le District de Québec n'a pas juridiction dans une poursuite instituée en vertu du Chapitre 30 des Statuts de Québec, 43-44 Vict. lorsque l'infraction mise à la charge du défendeur est alléguée avoir été commise sur le pont entre la municipalité de Beauport et celle de l'Ange Gardien, et qu'il n'appert pas qu'il n'y a pas de juge de paix dans l'une ou l'autre de ces municipalités. *Les Syndics des chemins à barrières de la rive Nord & Parent*, 8, Q. L. R. 321. S. C. 1881.

## BRITISH NORTH AMERICA ACT.

I. DIVISION OF LEGISLATIVE AUTHORITY UNDER *see* LEGISLATIVE AUTHORITY.

## BROKERS *see* AGENCY.

I. COMMISSION OF.

II. LIABILITY OF FOR MONIES DEPOSITED ON MARGIN *see* GAMBLING TRANSACTIONS.

III. WHO ARE.

I. COMMISSION OF.

81. The plaintiff by deed agreed to obtain security for the defendant in order to enable him to obtain a certain contract from the

Quebec government, and the defendant agreed to pay him therefore a commission of seven per cent on \$11,784, the price of the contract the said commission to be payable semi-annually until the discharge of the obligation. Defendant after some negotiations it was found had failed to comply with all the formalities prescribed by the Act authorizing the contract, and on this ground the action of plaintiff for his commission was dismissed in the court below (II, Dig. 123-103,) but in Review this judgment was reversed on the ground that plaintiff had carried out his agreement and earned the money. *Devlin & Beeman*, 4 L. N. 59. S. C. R. 1880.

82. Defendant had a claim against the government and plaintiff who was notary represented to defendant that he would go to Ottawa and negotiate a settlement for \$200 Commission. A writing was made to the effect that if plaintiff succeeded in effecting a transmission of the money from the government he was to get the \$200. Action for the \$200 and plea denying that plaintiff had got the money for defendant. Action dismissed for want of evidence. *Devlin & Wilson*, 6. L. N. 59. S. C. R. 1883.

83. Where a broker or agent has negotiated a sale of property between his principle and a purchaser whom he has procured, and an agreement for carrying out the transaction is entered into between the parties, he is entitled to his commission, notwithstanding that the agreement may have fallen through by reason of bad faith in one or other of the parties to the contract. *Lighthall & Caffrey* 6. L. N. 202 S. C. 1883.

84. In another case action by the plaintiff to recover the sum of \$130, alleged to be due by the defendant as commission for procuring for him a loan of \$13,000. The defendant required a loan of \$13,000. He accordingly entered into a written agreement with the plaintiff, in which the conditions were specially set forth, and the earning of a commission of one per cent, was made dependant on the loan being obtained by the plaintiff. The plaintiff, it appears, spoke to two notaries about the matter, without the negotiations resulting in anything; and finally, when it was probably too late for the purposes of the defendant, he spoke to Mr. W. and Mr. W. agreed to furnish the money on getting \$40 commission. The cheque for the \$40 has never been presented, and it was payable at the plaintiff's office. In the meantime, however, the defendant got the money in another quarter, and he did not take the loan from Mr. W. Now, the plaintiff's action is for a commission for procuring a loan. If the defendant had interfered with him in getting the loan, as he pretends, he might have brought an action of damages. Instead of that, he sues on a contract for a commission. He has earned no commission in the proper sense; and the action must, therefore, be dismissed. *Hetu & Brodeur*, 6 L. N. 59. S. C. 1883.

85. *Per curiam*.—The plaintiff was a man who had a good deal of experience in acting for companies in obtaining rafts of timber and other objects of towage. F., the agent of the defendants, proposed to give L. five per cent, on the amount of business done. The plaintiff declared at once that he would not work for a commission at all, but he offered to work for \$800 for the season. F. said he would report to the head office at Quebec. No agreement was come to, but the plaintiff went on and did the work, and now he brought his action to be paid for his services. The plea was that there was no contract, and that five per cent, on the work done that was productive, would be enough. But the plaintiff performed services where he did not succeed in getting any contract. The majority of the court were of opinion that he was entitled to a *quantum meruit* for all the services performed, and not merely for the services which were productive. The services were worth \$400, of which \$80 had been paid. Judgment would go for \$320. *Lemay & St. Lawrence Steam. Nav. Co. S. C. 1884.*

### III. LIABILITY OF, FOR MONEY DEPOSITED ON MARGIN.

86. A customer deposited money to be used as "margin" in buying stock for speculative purposes. No delivery of the stock so purchased was intended, the brokers instructions being to realise as soon as a small profit could be made. In consequence of a decline in value, and the margin being thereby exhausted the broker at one time sold stock at a loss. Held that no action would lie against the broker, under such circumstances, the contract being a gaming contract. *Allison & Macdougall, 27 L. C. J., 355 & 6 L. N. 93, S. C., 1883.*

### IV. WHO ARE.

87. Under a by-law imposing a tax on brokers and commission merchants. Held not to include ship agents. *Thompson v. City of Montreal; Shaw & City of Montreal; Sidey & City of Montreal. 4 L. N. 327, C. C., 1881.*

## BUILDERS—See ARCHITECTS.

### I. LIABILITY OF.

88. Case of *St-Louis & Shaw* (II Dig. 123-107) confirmed in appeal. 2 Q. B. R. 374, Q. B., 1882.

## BUILDING AND JURY FUND.

### I. ACT RESPECTING, see Q. 46 VIC., CAP. 17.

1. The first paragraph of sub-section 12 of section 15 of chap 109 of the Consolidated Statutes for Lower Canada is repealed and replaced by the following :

"12. The yearly contribution of twelve dollars from each local municipality in the district, subject to the following exceptions, and provisions that is to say : "

2. Section 10 of the Act 31 Vict., chap. 16, and the acts 41 Vict., chap. 16, and 42-43 Vict., chap. 7, are repealed.

3. Section 16 of chap. 109 of the Consolidated Statutes for Lower Canada, is repealed and the following substituted therefor :

"16. The yearly contribution to be made by local municipalities to the Building and Jury Fund, for the district in which they are respectively situated, shall not be payable in any district where the other sources of revenue constituting the fund are sufficient without such contribution, to meet the charges upon the Building and Jury Fund of such district."

4. This Act shall come into force on the day of its sanction. Q. 45 Vict., cap. 25.

## BUILDING SOCIETIES.

### I. ACTION TO ANNULL SALE OF BY LIQUIDATION.

### II. CONFISCATION OF SHARES.

### III. LIQUIDATION OF.

### IV. POWERS OF.

### V. RIGHTS OF.

### VI. RULES OF.

VII. WINDING UP OF, WHEN INSOLVENT, see C. 45 VIC., CAP. 23 & C. 46 VIC., CAP. 23 & C. 47 VIC., CAP. 39.

### I. ACTION TO ANNULL SALE OF BY LIQUIDATION.

89. In an action to set aside a sale of the assets of a defunct building society the plaintiff was shown only to own four shares which stood in the name of another, who had purchased them after the society had gone into liquidation and after it was in fact wound up. Held to have no interest to bring the action. *Bélanger & Gauthier, 5 L. N. 171, S. C., 1882.*

### II. CONFISCATION OF SHARES.

90. A minor may hold shares in the capital stock of a Building Society incorporated under the provisions of chapter 69 of the Consolidated Statutes of Lower Canada, and such shares are liable to confiscation for violation of the by-laws regulating the payment of calls. *Doran & McNally, 7 L. N. 360 & M.L.R., 1 S. C., 1885.*

91. And held also, that the confiscation of shares, under the conditions authorized by the by-laws of the Society, is an act of administration within the powers of the board of direction, and it is not necessary that it be authorized by the Society itself. *Id.*

### III. LIQUIDATION OF.

92. A member of a Building Society sued for the recovery of an assessment required to liquidate the affairs of the Society, cannot plead that no account has been rendered him and that he has not been offered any explanation why the liquidation is necessary. *The Mechanics Mutual Building Society & Lefebvre, 12 R. L. 294 S. C. 1881.*

93. To facilitate the liquidation of a mutual building Society a resolution was passed at a meeting of the borrowing members to dis



charge those who in three months should pay eighty per cent of their indebtedness the surplus after paying non-borrowing members in full to be divided among the borrowing members. *Held* that those non-borrowing members who did not discharge the society were not bound by this arrangement and were entitled to claim the surplus, to the exclusion of the borrowing members who had all discharged the Society. *Harvey & Shaughnessy*, 5 L. N. 429, S. C. 1882, 6 L. N. 369, Q. B. 1883.

#### IV. POWERS OF.

94. A building society has power under Cap. 69 C. S. L. C. to borrow money when it is authorized so to do by its by-laws. *Société de construction du Canada & Banque Ville-Marie*, 1 Q. B. R. 73 Q. B. 1880.

95. Action to set aside a deed of lease entered into between respondents and the auteur of the appellants. The respondents, a building society, purchased from the auteur of the appellants, certain immovable property situated in Montreal for \$2,200, and the same day leased for twelve years to the vendors for \$4,356.80 payable in 154 payments. This lease being transferred to appellants they sought to have it set aside on the ground that the Building Society had no right to purchase the property, that the acquisition was *ultra vires*, that the payments to respondents consequently illegal, and that the appellants cannot safely continue to make them. *Held* that under the terms of C. S. L. C. Cap. 69, Sec. 16 (1) that the purchase was quite within the powers of the society and judgment confirmed. *Laroque & La Société Permanente de Construction Jacques-Cartier*, 4 L. N. 363, Q. B. 1881.

96. The plaintiff, a building society, had advanced money and in renewal of the loan and security therefore had discounted the note on which it sued. The action was contested on the ground that the society had no power to discount notes. The plaintiff relied upon the Act of Quebec 36 Vic. Cap. 78, permitting the Society to invest its surplus funds *inter*

*alia* in loans to persons whether shareholders or not, and on any security personal or real, which may be deemed sufficient by the Directors of the Society. *Held* reversing the judgment of the Court below that discounting notes was not engaging in banking, and was within the powers so conferred. *La Société Permanente District d'Iberville & Rossiter*, 4. L. N. 269. S. C. R. 1881.

#### V. RIGHTS OF.

97. The defendant borrowed a sum of money from a building society and in the hypothec gave them power to sell, without any formality, the property in default of payment, which they did. The plaintiff was the purchaser. *Held* that this did not authorize them to sell as they had done. *Gélinas & Marchand*, 9 Q. L. R. 120. Q. B. 1883.

#### VI. RULES OF.

98. The plaintiff claimed under a rule of a building society which had been changed and substituted the right to retire and get back his money when he pleased. *Held*, following *Prevost & Société Canadienne Française de Montréal*. (II. Dig. 125-114,) that he was not bound by the change, but would have to pay what he owed in deduction. *Robillard & Société Canadienne Française de Construction*, 4. L. N. 133. S. C. 1879.

### BUILDINGS *see* ARCHITECTS, CONTRACTORS.

#### I. LIABILITY FOR ACCIDENTS IN CONNECTION WITH *see* DAMAGES.

### BURIALS.

#### I. ACT CONCERNING.

Sections 1. 2. & 15 of the Act. 38 Vict. Cap. 84. are amended so as to render them applicable to private or family vaults. Q. 48 Vict. Cap. 27. Sec. 1.

The following section is added to the said act after section 4 thereof.

"4 a. In every parish comprising one hundred families or more, the bodies of persons who have died from epidemic disease shall be transferred to the place of burial in a vehicle or hearse specially kept for that purpose and after the epidemic has disappeared, no person shall be permitted to make use of such vehicle or hearse before it has been thoroughly disinfected." Sec. 2.

In all burials in a cemetery the coffin shall be covered with at least three feet of earth. Sec 3.

### BUSINESS.

#### 1. GOOD WILL OF *see* GOOD WILL.

### BY-LAWS *see* MUNICIPAL CORPORATIONS.

(1) Every such Society shall by one or more of its said rules declare all and every the interests and purposes for which such society is established; and shall also in and by such rules direct all and every the uses and purposes to which the money from time to time to subscribed, paid or given to or for the use and benefit of the said society or arising therefrom or in anywise belonging to the Society, shall be appropriated and applied and in what shares and proportions under what circumstances any member of such Society, or other person, shall become entitled to the same, or any part thereof; But the application of such money shall not in anywise be repugnant to the uses, interests or purposes of such society or any of them to be declared as aforesaid; and all rules during their continuance shall be complied with and enforced; and no such moneys as aforesaid shall be diverted or misapplied either by the directors or treasurer, or any other officer or member of the Society interested therewith under such penalty or forfeiture as the Society may, by any rule inflict for such offense. C. S. L. C. 69. Sec. 4.

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## CAB TARIFF.

## I. IN THE CITY OF MONTREAL.

1. On a certiorari from a conviction by the Recorder. *Held* that the tariff which regulates the hire of carriages in the City of Montreal applies also the engagements commenced within the City and terminated outside in another municipality. *Robert Exp.*, 6 L. N. 148, S. C., 1883.

## CADASTRE.

## I. ACT RESPECTING.

Whereas since the passing of the act 38 Vict., cap. 15, certain proprietors have subdivided and sold in lots, certain lands without having previously prepared a plan and book of reference as required by Article 2175 of the Civil Code (1), and whereas serious inconveniences have arisen to the actual holders of such lands; Therefore Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

The provisions of the Act. 38 Vict., cap. 15, sec. 2, are continued and applied to what has taken place previous to the passing of this act, but shall not be interpreted as permitting, for the future, the making of plans and books of reference, otherwise than in accordance, with the provisions of the said article 2175 of the Civil Code and of the said Act, 38 Vict., Cap. 15. Q. 48 Vict., Cap. 26.

## CALLS.

I. LIABILITY FOR ON SHARES OF BANK AND OTHER STOCK, *see* BANKS, COMPANIES.

CANADA GAZETTE.—*See* OFFICIAL GAZETTE.

## CANADIAN PACIFIC RAILWAY.

I. ACT RESPECTING AMENDED, *see* C. 47 VIC., CAP. 1, & C. 48-49 VIC., CAP. 57.

## CANCELLATION.

I. OF DEED OF SALE, *see* SALE.

II. OF LETTERS PATENT TO CROWN LANDS, *see* CROWN LANDS.

(1) Whenever the owner of a property designated up the plan or book of reference subdivides the same into town or village lots (exceeding the number of six), he must deposit in the office of the Commissioner of Crown Lands a plan and book of reference certified by himself with particular numbers and designations, so as to distinguish them from the original lots, and if the Commissioner of Crown Lands finds that such particular plan and book of reference are correct, he shall transmit a copy certified by himself to the registrar of the division. 2175. C. C.

## CANDIDATES.

I. AT MUNICIPAL ELECTIONS, *see* MUNICIPAL CORPORATIONS.

II. DISABILITIES OF REMOVED UNDER CERTAIN CIRCUMSTANCES, *see* ELECTION LAW.

III. LABEL AGAINST, *see* LABEL.

## CANNED GOODS.

## I. ACT RESPECTING.

1. In this Act the expression "package" means every tin, can or package in which articles or goods are put up for sale, and which are closed by being hermetically sealed. C. 48-49 Vict., cap. 63.

2. Except in the case of goods packed previously to the passing of this Act every package of canned goods sold or offered for sale in Canada for consumption therein after the first day of January, one thousand eight hundred and eighty-six, shall have attached thereto or imprinted thereon a label of stamp in legible characters the name and address of the person, firm, or company by whom the same was packed, or of the dealer who sells the same or offers it for sale:

Every such package containing goods produced from products which have been dried previously to being so prepared, shall in addition, be labelled or stamped with the word "soaked": *Ib.*

Every person who sells or offers for sale any such goods in violation of any provision of this section, shall, on summary conviction, before a justice of the peace, for a first offence, incur a penalty of two dollars for each such package and for a subsequent offence, a penalty not exceeding twenty dollars, and not less than four dollars, for each such package in respect of which provision has been violated: *Ib.*

3. Every person who places on any package any label, brand or mark which falsely represents the quantity or weight is so falsely represented: Provided always that a variation under the rate of three per cent, shall be deemed a violation of the provisions of this section.

4. Every person who places on any package any label, band or mark which falsely represents the date when the article or goods contained therein were packed shall on summary conviction before a justice of the peace, incur a penalty of two dollars for each package on which such date is falsely represented.

5. Section four of the act passed in the forty-seventh year of Her Majesty's reign and chaptered thirty-six is hereby repealed.

## CANVASSERS.

1. EXPENSES OF AT ELECTIONS *see* ELECTION LAW.

CAPACITÉ, *see* QUALIFICATION.

## CAPIAS.

I. AFFIDAVIT.

II. AFTER JUDGMENT.

III. DECLARATION IN CASE OF.

- IV. DECLARATION OF ABANDONMENT.
- V. GROUNDS OF.
- VI. ISSUE OF WRIT.
- VII. PETITION TO QUASH.
- VIII. RETURN OF WRIT.
- IX. SECRETION.
- X. WRITS OF MAY BE ISSUED AFTER HOURS.

## I. AFFIDAVIT.

2. An affidavit which does not show before whom it was taken, the *jurat* being expressed in the following terms. — *Assermenté dans la cité de Montréal ce douzième jour 1878, signé, Hubert, Honey & Gendron, is insufficient in law. Tate & Smith, 12 R. L. 438 S. C. 1878.*

3. When a capias is founded upon belief of plaintiff that the defendant is about to abscond, and states that his reasons for so believing are "that he has been so informed by A. B. & C. D., that affidavit is not sufficient, and under the circumstances of the case, proof that the defendant was not immediately about to abscond, when it had appeared, that he had himself declared that, under certain not improbable conditions he would go to Chicago and where intention to defraud was evident, was held not sufficient to disprove plaintiff's affidavit. *McRae & Miller, 28 L. C. J. 268. S. C. 1881.*

4. On appeal from a judgment maintaining a capias. *Per curiam.*—The affidavit in this case sets a capias out no fact beyond the departure of the defendant and his failure to pay what he owes. It has now been so often laid down that this is not sufficient, that the jurisprudence must be considered settled on the point. How a departure is to become "with intent to defraud" otherwise than by the non-payment of the debtor's liability it is not easy to understand; but the law would cease to be interesting if it had not its little mysteries. I take it however that the recent rulings have completely annihilated the seafaring man doctrine. *Caffrey & Lighthall, 4 L. N. 2822 Q. B. R. 10. Q. B. 1881.*

5. Petition to quash a capias on the ground that the affidavit did not allege the secretion to have taken place since the indebtedness. It said that in February 1879 there had been a conversation between the parties, and since that time the defendant had secreted. The debt was contracted some months after that. It was not expressly said that there was a debt at the moment of secretion. *Held* that the affidavit was wanting in precision and therefore technically deficient. *McAllen & Ashby, 4 L. N. 50, S. C. R., 1881.*

6. An affidavit for capias alleged amongst other things: "*Que le dit déposant est informé d'une manière croyable, a toute raison de croire et croit vraiment en sa conscience que le dit F. X. D. a déjà caché et recelé une partie de ses biens, dettes et effets et est sur le point immédiat de cacher et receler la balance de ses biens, dettes et effets, le tout dans la vue de frauder les dits demandeurs et ses*

*créanciers. Que le dit déposant est informé des faits en dernier lieu mentionnés par etc., etc."* Question as to the personal knowledge of deponent of the facts alleged. *Held* on authority of *Brooke & Dallimore (1), & Griffith & McGovern* to be sufficient. *Oroteau & Demers, 7 Q. L. R. 277, S. C., 1881.*

7. An affidavit for capias made after the institution of an action for the recovery of the debt and containing only the allegation, that since the institution of the action the defendant has secreted and made away with his goods, debts and effects, with the intention of defrauding his creditors in general and the plaintiffs, in particular, is sufficient and legal and it is not necessary in such affidavit to give the grounds of the deponent's belief. *D'Anjou & Thibaudeau, 11 R. L. 512, Q. B., 1882.*

8. The allegation in an affidavit for capias that "*le défendeur cache ses biens avec l'intention de frauder ses créanciers en général ou le déposant en particulier*;" as also that "*le défendeur a caché ou est sur le point de cacher ses biens*" are sufficiently positive, nor is it necessary for the deponent to enumerate the reasons which he has for so believing. *Montgomery & Lyster, 8 Q. L. R. 375, S. C. R., 1882.*

9. And the quality of the person who received the affidavit is sufficiently indicated by terms which permits the Court to recognize its officers. *Ib.*

10. The defendant on a petition to quash a capias against him cannot cross examine a deponent as to the allegations of his affidavit, but must call him as his own witness. *D'Anjou & Thibaudeau, 11 R. L. 512, Q. B., 1882.*

11. An affidavit for capias, alleging in the alternative that the defendant is secreting or is on the point of secreting his property and effects, &c., is insufficient. *Gannon & Wright, 5 L. N. 404, S. C. 1882.*

12. An affidavit for capias, under C. C. P. 798, in which as to the alleged secreting, the deponent swears: "*Le déposant est informé d'une manière croyable, a toute raison de croire et croit vraiment en sa conscience que le dit O. B. a caché et soustrait, et est sur le point de cacher et soustraire avec l'intention*" &c., is sufficient. *Blake & Wadleigh, 6 L. N., 3 Q. B., 1882.*

13. The plaintiff, in swearing that the departure of the defendant would make him lose his debt and sustain damage deposes that he will lose his recourse, and when the affidavit made use of the former expression. Instead of the latter, it was held sufficient. *Piché v. Bernier, 10 Q. L. R. 351, S. C. R., 1884.*

14. An affidavit alleging that the defendant "has secreted" his property, or "has absconded," without indicating any time when such secretion or absconding has taken place, is insufficient, and does not comply with articles 834, C. C. P. *Weinrobe & Solomon, 7 L. N., 109 S. C., 1884.*

(1) 1 Dig. 113-824.

## AFTER JUDGEMENT.

15 Capias after judgment will not be except as an incident in the original cause and in the same district. (1) *Mathewson & Bush, & Shorey & Bush, & Lake St Francis Navigation Co & Bush*, 4 L. N. 342, S. C. 1881.

## DECLARATION IN CASES OF.

16. The plaintiff obtained judgment against the defendant for an alimentary allowance. Some time after the judgment was rendered he issued a writ of capias on the ground that he was making away with his estate &c. The defendant contested by petition the right of the plaintiff to issue the capias, and after issue joined the petition was dismissed. He did not however contest the declaration accompanying the capias, and the plaintiff inscribed for final *ex parte*. *Held* that when a capias is issued it is essential for the plaintiff to allege in his declaration that the defendant is secreting and has secreted his estate, or that he intends to leave the heretofore province of Canada with intent to defraud, or at the least to refer to the affidavit which led to the capias, and the court will take cognizance of such defect when the defendant has not contested the declaration. *Howard & Howard* 9 Q. L. R. 172. S. C. 1882.

17. Même dans le cas où le demandeur a déjà pris une saisie-arrêt avant jugement accompagnée d'une déclaration, le capias émané dans la même cause, pour les mêmes raisons doit aussi être accompagné d'une déclaration. *Morandat & Varet*, 7. L. N. 382. & M. L. R. 1. S. C. 109, S. C. R. 1884.

## DECLARATION OF ABANDONMENT.

18. Where the defendant had given bail under 825 C. C. P. and had left the country and judgment had been rendered against him, *Held* distinguishing the case from *Poulet & Lanrière*, (II Dig. 135-39.) that he is bound to file a statement within thirty days or be imprisoned. (2) *Hochelaga Bank v. Goldring*. 4 L. N. 324. S. C. 1881.

19. On the 8th July, 1880, by a judgment of the Superior Court a capias taken against the appellant was declared good and valid. The appellant did not file a statement as required (3) by law within 30 days under Art.

(1). Confirmed in appeal but unreported.

(2) For the new provisions concerning abandonment in cases of insolvency see *INSOLVENCY*, Ed.

(3) If the contesting party establish any one of the offences mentioned in Art. 773, or if the defendant refuses to attend or to answer, as required under the preceding article, the court or judge may condemn him to be imprisoned for a term not exceeding one year. If the debtor so ordered to be imprisoned does not surrender himself, or is not surrendered for that purpose according to such order, then the sureties are liable to pay the plaintiff the debt together with interest and all costs.

776 C. C. P. On the 31st August following the appellant was summoned to shew cause why he should not be imprisoned for a year under Art. 2274 C. C. (1) and Cap 87 C. S. L. C. Sec. 12, S. S. 2.) The appellant appeared and contested the application without filing any statement and was condemned to one year imprisonment. But held in appeal (reversing) that by the second paragraph of Art. 1360 C. C. P. (2) the laws concerning procedure in force at the time of the coming into force of the Code are abrogated, in all cases in which such laws are inconsistent with any provision of the Code of Procedure, or in which express provision is made by the Code of Procedure upon the particulars matter to which such laws relate, and although by the 1st par. of Art. 766 C. C. P. a debtor who has been admitted to bail is bound to file the statement and declaration of all the property of which he is possessed, according to Art. 764 of the same code, within 30 days from the judgment rendered in the suit it was not provided in said article, nor in any other article of said code, nor in any provision of law now in force, that in default of filing such statement and declaration the debtor shall be imprisoned or be subject to any penalty whatsoever. (3) *Molson & Carter*, 26 L. C. J., 159 and 8 Q. L. R., 333 Q. B. 1882 & 6 L. N., 189, and 27 L. C. J., 157. P. C., 1883.

20. On a petition for *contrainte par corps* against defendant. *Held* following. *Poulet & Lanrière* (4) that a defendant arrested on capias, who has given special bail not to leave the country, is not bound to file the statement and make the declaration men-

(1) Any debtor imprisoned or held to bail, in a cause wherein judgment for eight dollars or upwards is rendered is obliged to make a statement under oath, and a declaration of abandonment of his property for the benefit of his creditors according to the rules and subject to the penalty of imprisonment in certain cases, provided in Cap 87. C. S. L. C. and in the manner and form specified in the C. C. P.

(2) The laws concerning Procedure in force at the time of the coming into force of this Code are abrogated.—In all cases in which this code contains any provision having expressly or impliedly that effect; inconsistent with any provision of this Code or,

In all cases in which such laws are contrary to or inconsistent with any provision of this code or in which express provision is made by this code upon the particular matter to which such laws relate. Except always that as regards proceedings, matter, and things anterior to the coming into force of this code, and to which its provisions could not apply without having a retroactive effect, the provisions of law, which without this code would apply to such proceedings matters and things remain in force, and apply to them and this code applies to them only so far as it coincides with such provisions.

(3) Monk J. & Teessier J., concurred, the latter being of opinion that the defendant should have had notice of the Judgment.

(4) II Dig., 135-39.

tioned in Art. 766, C. C. P. (1) *Cossitt & Lemieux*, 4 L. N. 263, S. C., 1881, & 27. L. C. J. 574 & 5 L. N. 254 & 2 Q. B. R. 14, Q. B., 1882.

#### V. GROUNDS OF.

21. The evidence showed that the defendant, a sewing machine agent, took a lease from plaintiff, jointly with another, at a rental of \$240 *per annum* and secretly removed the furniture in May to Brockville where his employer required him to locate himself for a time as local agent. He had previously resided in New York, whence he had removed to Montreal, and he had said that if he did not succeed in Brockville he would go back to the States. He had bought the furniture in Montreal with money advanced by the tenant, some \$500. At the time he left in May he said to his co-tenant that he would try to get bonds for the Brockville office, and if he could not get them he would try to remain there without bonds, and if he could not remain without bonds he would go to the States. *Per curiam*. These facts prove that plaintiff had grounds for believing that defendant might at any time remove into the States, as he had, so far as he was concerned fraudulently removed from Montreal without settling with him, but secretly taken away his furniture. *Held* sufficient. *McCrae & Miller*, 4 L. N. 324. S. C. 1881.

22. On the contestation of a capias it appeared that defendant had received delivery in Winnipeg, where he carried on business, of a large quantity of goods from plaintiff but whether purchased or on consignment the evidence differed. He had been in Montreal for several weeks trying to arrange a settlement with his creditors, and was about to return home by way of New York when he was capiased on the usual affidavit of *meditatione fugæ*. Judgment setting aside the capias on the ground of want of proof of intent to defraud was confirmed. *Marotte & Moody*, 11 R. L. 460, S. C., & 5 L. N. 359, S. C. R., 1882.

23. In another case the evidence was that the defendant on pretence of making use of plaintiff's bank account to draw on a firm in New York, with whom he claimed to have dealings, persuaded plaintiff to advance him \$100 on the strength of his draft for that amount, which he said was sure to be honored. The draft was dishonored. While being threatened with criminal proceedings he

(1) A debtor who has been admitted to bail is bound to file this statement and declaration within thirty days from the date of the judgment rendered in the suit in which he was arrested. Any person condemned to pay a sum exceeding eighty dollars exclusive of interest, from service of protest and costs for a debt of a commercial nature is, likewise, after such moveable and immoveable property, as he appears possessed of has been discussed, bound, upon being required to do so, to file a similar statement.

removed to Toronto, and from there obtained from plaintiff through a lawyer a promise in writing not to prosecute, on condition of furnishing an accepted draft from the New York firm payable in sixty days. Defendant after remaining in Toronto a short time went to the States where he obtained employment. The accepted draft was dishonored the same as the first, and plaintiff was still out of his money, when defendant came to Montreal on a visit which it was known would only detain him a few days, and was arrested on the usual affidavit for capias. The intention to return to the States was not denied as the defendant was about to leave for the railway depot to return home when arrested. *Held* on petition to quash that there was no proof of intent to defraud. *Carter & Graham*, S. C., 1884.

24. *Held* that where a debtor who in 1875 had secreted his property and left Canada with intent to defraud, came temporarily into the Province in 1882, and was capiased as he was again leaving, that the secretion and departure in 1875 coupled with intention of again leaving in 1882, were sufficient ground for the arrest; and the capias was declared good. *McFarlane & McNiece*, 7 L. N. 398, S. C., 1884.

#### VI. ISSUE OF WRIT.

Art. 812 of the said Code is amended by adding thereto the following:

"The commissioner cannot issue a similar warrant at the *chef-lieu* of a district unless it be established before him by affidavit that it was impossible for the plaintiff or his agent to obtain such writ of capias from the protonotary or his deputy." Q. 48 Vict., cap. 20, sec. 12.

#### VII. PETITION TO QUASH.

25. Motion to set aside a petition to quash as containing mixed matters of law and fact. *Per curiam*. There is nothing in this motion and it must be dismissed. Under 819 C. C. P., the defendant is allowed to show that the allegations of the affidavit are false or insufficient. Petitioner says that the allegations of the affidavit are false and that they are insufficient. Motion dismissed. *Baxter & Sills*, 4 L. N., 221 S. C., 1881.

#### VIII. RETURN OF WRIT.

26. Les délais pour faire une exception à la forme à un bref de capias doivent compter seulement du jour du rapport fixé dans le bref, et non pas du jour où le bref est rapporté au greffe sur un ordre du juge. *Morand & Varet*, 7 L. N. 382 & M. L. R., 1. S. C. 109. S. C. R. 1884.

#### IX. SECRETION.

27. Case of *Molson & Carter*, (II. Dig. 141-62) reported in *extenso* 25 L. C. J. 65. Q. B. 1880.

28. An affidavit for capias set out that prior to the attachment and within the three

months preceding it, defendant had disposed of a portion of his stock in trade to one D., the purchase price of which remained unpaid. *Held*, overruling *Gault & Donnelly* (1), that there was no distinction between "secreting" and "fraudulent preference," and that the acts of the defendant were equivalent to a *recel*. *Gault & Dussault*, 4 L. N. 321, Q. B., 1881.

29. The defendant refused to deliver wood according to contract, demanding a higher price than had been stipulated in a notarial agreement. *Held*, that this was not a secreting, and the *capias* issued against him was quashed without costs. *Mantha & Seguin*, 6 L. N. 12, S. C., 1882.

30. A *capias* was issued against the defendant B. F. B. on the ground of secretion. It was alleged that the defendant had been doing business at St. John's, P. Q., under the name of B. & Co., and had made promissory notes in the name of the said firm, on which there was a balance due of \$704.67; that he had secreted his effects, &c. The defendant in his petition to quash the *capias* denied the making of the notes but did not file any affidavit to show that the signature was forged. He pretended that he was merely acting under a power of attorney from the registered firm of B. & Co. S. H., who constituted the registered firm of B. & Co. was examined and stated that she signed the notes, and that the signatures were in her own handwriting. *Held*, that the person registered as the firm of B. & Co. was merely a *prête-nom* for the defendant, who was the actual owner of the business. *Capias* maintained. *Graham & Bennett*, 6 L. N. 298, S. C., 1883.

#### X. WRIT OF MAY BE ISSUED AFTER HOURS AND WITHOUT STAMPS.

In cases of *capias*, attachment before judgment, attachment for rent, conservatory attachment, and in all cases of urgency, the writ may be issued outside office hours without having judicial stamps thereon, provided that the amount of such stamps be deposited with the officer issuing the writ, who is bound to affix the stamps upon the *flat* as soon as possible. Q. 48 Vict., cap. 20, S. 7.

### CAPITAL.

#### I. INTEREST ON, *see* INTEREST.

### CARE.

#### I. LIABILITY FOR WANT OF, *see* DAMAGES, NEGLIGENCE.

(1) 1 Dig. 206, 162.

### CARGO.

#### I. RIGHTS AND DUTIES CONCERNING, *see* AFFREIGHTMENT, CARRIERS.

### CARRIAGES.

#### I. HIRE OF, *see* CAB TARIFF.

### CARRIERS—*See* AFFREIGHTMENT.

#### I. BILLS OF LADING.

#### II. LIABILITY OF.

#### III. RAILWAYS.

#### IV. STEAMBOATS.

#### I. BILLS OF LADING.

31. Wheat was carried by a schooner from a port in the United States to Kingston Ont. under a bill of lading requiring its delivery, there to the defendants subject to the order of the shipper, and was accepted from the schooner and a receipt therefor given on the duplicate of the bill of lading, and forwarded by the defendants to Montreal, and there delivered without the order of the shippers and without the surrender or presentation of the bill of lading. The question was whether the appellants, the Forwarding Company were held to the same obligations as if they had been signers of the original bill of lading, which the respondents contended had force and effect until the cargo reached its destination in Montreal, and whether the appellants as forwarders were bound to have demanded and secured the surrender of the original bill of lading on delivery by them of the cargo to the consignees. *Held*, reversing the decision of the Superior Court (5 L. N. 6; 25 L. C.J. 324), that the bill of lading was fulfilled and became effete by the delivery of the wheat at Kingston, prior to the assignment of the bill of lading to the respondents. (1) *St. Lawrence & Chicago Forwarding Co. & Molson's Bank*, 7 L. N. 367, & 1 M. L. R., Q. B. 75, 1884.

32. And the negotiability of a bill of lading cannot be put upon precisely the same footing as a bill of exchange. An advancer on a bill of lading should exercise reasonable diligence as regards the cargo it imports to represent. *Id.*

33. And the alleged usage of trade imposing the obligations incurred under the first bill of lading upon the carrier who accepts a cargo carried to an intermediate port, to forward to its final destination by an additional transit so as to require such ultimate carrier to procure the surrender of the original bill of lading, to free himself from responsibility, could not alter the established significance of the documents used, or the legal relations of the parties according to the facts of the case, or make liability depend upon obtaining

(1) In Supreme Court.

surrender of a document after it had exhausted its efficiency and ceased to have any operation. *Ib.*

## II. LIABILITY OF.

34. Where a person in the employment of the carriers assumes the charge of baggage delivered on board the vessel the carrier is liable for such baggage, though the person who received the baggage was there merely during the temporary absence of the officer whose duty it was to receive the baggage. *Morrison & The Ontario & Richelieu Navigation Company*, 5 L. N. 71, S. C., 1882.

35. The defendant were a Company who undertook the delivery of parcels and messages. The plaintiff had entrusted them with a parcel addressed to one B., a purser on board The Richelieu Company's steamer "Montreal." The message-boy, not finding B. there, left it with a man in charge of the Richelieu Co's sheds on the wharf. The parcel did not reach its destination but was lost. Held that the Company was liable. *Nelson & The Canadian Telegraph Co.*, 6 L. N. 184, C. C., 1883.

36. Action of damages against the lessee of the Q. O. & O. R.R. for breach of contract. The defendant agreed to run the railroad trains between Hochelaga and Calumet in connection with a steamer run by plaintiff, between Ottawa and Calumet. The chief complaint was that defendant had failed to provide a proper wharf and shed at Calumet or to deepen the channel so as to allow his steamer to approach the landing place, that on or about the 18th June, he had suddenly changed the hours of departure and arrival of his trains so as to break the connection with plaintiff, to his great damage and he had also broken his agreement as to an excursion train on the Queen's birthday 1877. Evidence that the defendant changed the hours of his trains as complained of without the consent of plaintiff and in a manner which was not justified by the contract. Damages to the extent of \$105 allowed. *Belcourt & Macdonald*, 4 L. N. 226, S. C., 1881.

## III. RAILWAYS.

37. *Per curiam*.—In this case an action of damages was brought by the respondent, for expulsion from a sleeping car berth. If the allegations were proved it would appear to be an extraordinary outrage. The respondent, after taking a ticket for a sleeping berth from New York to Montreal, and paying for it, was put out of the car. It was one of those things for which a Company should be held strictly responsible. But at present the case came up, not on the merits, but on a judgment dismissing two preliminary pleas. The action had been served on the Company's alleged agent in Montreal. The question had been raised whether Mr. V. was an agent. It was proved that he sold tickets like that sold to respondent. He had an office in Montreal

and was publicly advertised as their agent. He also offered to get back respondent's money for him when he heard of the difficulty. Upon the whole, the Court was not disposed to disturb the judgment which held the proof of agency sufficient. With regard to the omission to allege where the principal business of the Company was, that was not obligatory in the case of foreign Companies. The trespass was continuous from New York to Montreal and was a trespass in Canada. *New York Central Sleeping Car Co. & Donovan*, Q. B., 1882.

1. Any railway company subject to the jurisdiction of the Parliament of Canada or to which "The Consolidated Railway Act 1879, applies, and the Minister of Railways and Canals as respects any railway under the control of the Government of Canada, may appoint, in any city, town or village in Canada, such person or persons as they or he may choose, as agents for the sale of passenger tickets to passengers or persons desiring to travel by the railway of the company employing such agent, or by any Government railway, as the case may be. C. 45 Vict., cap. 41, sec. 1.

2. The Minister of Railways and Canals or Company hereinbefore described, employing any such agent, shall give him a certificate of his appointment, which shall be under the hand of the said Minister or the corporate seal of the Company appointing him, and such agent shall keep the same framed or exhibited in some conspicuous part of his office or place of business where it can be seen and read by those resorting to the office.

3. Every ticket so sold by any agent shall have the name of such agent and the date of the sale written or stamped plainly upon it, and any person fraudulently altering, changing or imitating such signature or date shall be guilty of an offence against this act. This act shall also apply to the agents of foreign railway companies doing business in Canada, who shall be required, before issuing tickets over Canadian lines, to be duly authorized for such purpose by the Minister of Railways and Canals, or company over whose line they desire to issue tickets, in the same way as is provided in section one, and shall also be required to have and exhibit in like manner a certificate from the foreign company he or they may represent.

4. Nothing in this Act shall preclude the duly authorized agent of any Company from procuring from the properly authorized agent of any other company, a ticket for a passenger to whom he may have sold a ticket to travel over the line or any part thereof for which he is the authorized agent, so as to enable such passenger to travel to the point or junction from which he may have previously secured his ticket.

5. No person whosever, except those authorized as above mentioned, shall sell or offer for sale, any railway passenger ticket, or pass, ticket, certificate, or other instrument, enabling any person or persons, or purporting to entitle any person or persons to travel on any one railway, or more than one railway, or on any part of one railway, or parts of several railways to which this Act applies, and any person or persons offending against this Act shall, upon summary conviction thereof before any Justice of the Peace, be subject to a fine of not less than twenty dollars nor more than fifty dollars, in the discretion of such Justice and to pay the costs of the prosecution and conviction, or to imprisonment for not less than ten days nor more than ninety days in the common gaol, or to both fine and imprisonment, in the discretion of the Justice.



6. All complaints regarding the contravention of this Act, shall be prosecuted by information, and shall be subject to the provisions of the Act passed in the Session held in the thirty-second and thirty-third year of Her Majesty's reign and intitled "An Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders."

7. Nothing in this Act contained as regards the appointment of agents for the sale of tickets shall prevent the station agents of the minister or company at their stations, and in their tickets offices at such stations from selling tickets to passengers about to enter upon and travel by railway from the said stations.

8. The examination of any complainant or witness, taken or heard under oath in the presence of the person accused, on the hearing of any complaint, for any offence, against the provisions of this Act, (if the person charged, or his counsel, or agent, shall have had the opportunity of cross examining such complainant or witness, whether he has done so or not), may, on the hearing of any appeal from any decision of such magistrate, be used in evidence, provided the person whose examination is so used, is out of the jurisdiction of the Court to which the appeal is made; and provided further that the said examination or evidence has been reduced to writing and has been signed by the person whose examination it purports to be; and to entitle the said examination to be read and taken as evidence on the hearing of such appeal, it shall only be necessary to produce the certificate of the magistrate or person before whom the said trial was had, under his hand, certifying that the said deposition which is offered in evidence, was taken before him on the hearing of the complaint which forms the subject matter of the said appeal, and on the production of the said certificate the said deposition or evidence of such absent person shall be taken and received as evidence, without further proof, on the trial of any such appeal.

9. The Minister of Railways as regards any Government railway and every railway company subject to the jurisdiction of the Parliament of Canada, or to which "the Consolidated Railway Act, 1879," applies, shall repay to any ticket holder the cost of his ticket, if unused, in whole or in part, less the ordinary and regular fare for the distance for which such ticket has been used; and such repayment shall be made at any station or office of the railway or company between, and including the points covered by the ticket; and the sale by any person of the unused portion of any ticket otherwise than by the presentation of the same for redemption as provided for in this section, shall be deemed to be a violation of the provisions of this Act, and shall be punished as hereinbefore provided: Provided always, that the claim for such redemption be made within thirty days from the expiration of the time for which the ticket was issued in accordance with the conditions thereon.

10. Passengers presenting single journey tickets upon the trains within the time for which the conditions printed upon them, and the dates show such tickets to be good for use, may apply to the conductor of such train to have the privilege of stopping over granted, and the time for which the ticket is valid extended, which shall be conceded on tickets purchased at railway ticket offices in Canada, from one place in Canada to another or from a place in Canada to a place in the United States; but no railway company shall be required to extend the time more than two days for every fifty miles of distance to be travelled in Canada.

#### IV. STEAMBOATS.

38. The defendant ran a line of steamboats between Quebec and St. Romuald, and for the use of her boats used a quay at St. Romuald, known as the "Quai Benson," for which she paid a rent to the proprietor. In November 1879, she carried to St. Romuald for plaintiff a cask of sirup and delivered it on the quay to one of the plaintiff's employees. While being carried over the quay in a cart or vehicle the cask was broken owing to the bad state of the quay, and all the contents lost. Action to recover the value on the ground that in inviting the public to pass over the quay in order to reach the steamboat, the defendant implicitly guaranteed that the quay was safe and suitable for such purpose and could be traversed without risk of accidents such as the one in question; that in short there was an implied contract between the proprietor of the steamboat and the public using the boat that the former should keep the quay in good order. *Held* that notwithstanding *Borlase & St. Lawrence Steam Navigation Co.*, (1) that the liability of the carrier ceased the moment the goods were out of his hands. *Leclerc & Gaherty*, 7 Q. L. R. 30, C. C., 1880.

39. Action against a ferryman to recover the value of a horse which was injured while on board the ferryboat so that it died. The evidence showed that a horse and wagon, the property of the plaintiff, were driven by the son of plaintiff on board a steam ferry boat plying between Verdun on the Island of Montreal and La Tortue on the opposite side of the River St. Lawrence. The horse was taken out of the wagon while on board the steamer in order to give more room. Shortly before arriving at the landing place there was a stir among the horses and the pole of a wagon struck the horse behind, and inflicted a wound from which it died in three days. It did not appear distinctly who took the horse out of the wagon to which (2) it belonged, but it was presumed by the court that the men of the boat did so. *Held* that the proprietor of the boat was an ordinary carrier; that the passengers and horses were in his charge, and the burden of proof was on him to prove exemption from liability under Art. 1675 C. C. Judgment of first instance reversed (3) and action maintained. *Robert & Laurin*, 26 L. C. J. 378 and 5 L. N. 362, S. C. R. 1882.

(1) II Dig. 143, 70.

(2) They are liable for the loss or damage of things entrusted to them, unless they can prove that such loss or damage was caused by a fortuitous event or irresistible force, or has arisen from a defect in the thing itself.

(3) 5 L. N., 180.

For and notwithstanding anything to the contrary in the Act passed in the thirty-first of Her Majesty's reign, intituled "An Act respecting the inspection of steamboats and for the greater safety of passengers by them" or in any Act amending it—

The Minister of Marine and Fisheries may authorize the use in individual cases, of boats of different dimensions from those specified in section 16 of the Act above cited and upon such authorization being granted, it shall be sufficient that boats of the dimensions specified in such authorization be provided for and carried on the steamboat to which such authorization relates. In cases where an iron tube or tubes equal in diameter to the hose carried by the steamboat is or are fixed under the hurricane deck thereof, and provided with nozzles placed at distances of not more than thirty feet from each other, or from either end of the steamboat, to which nozzles the hose carried by the steamboat can be readily attached, it shall not be necessary that the hose should be of greater length, than will be sufficient to reach from some one of such nozzles to either end of the steamboat.

In steamboats under one hundred tons measurement, one steam pump of suitable size, or if steam cannot be employed, one force pump of suitable size, worked by hand, shall be sufficient.

Three davits properly constructed shall be considered sufficient for lowering two boats. C. 44 Vict., Cap. 21, Sec. 1.

The words "and with an efficient fog horn to be sounded by a bellows or other mechanical means" in the third, fourth and fifth lines of article twelve of section two of the Act passed in the forty third year of Her Majesty's reign and intituled: "An Act to make better provision respecting the navigation of Canadian Waters" are hereby repealed.

## CARTERS.

### I. RIGHT OF WITH RESPECT TO LICENSES.

See MUNICIPAL CORPORATIONS CARTERS LICENSES.

### II. TARIFF OF See CAB TARIFF.

## CAS FORTUIT.

### I. CASES OF See DAMAGES, NEGLIGENCE, &c.

## CATHOLICS.

### I. RIGHTS AND DUTIES OF See CHURCHES, PUBLIC WORSHIP, TITHES.

### II. MARRIAGE OF See MARRIAGE.

## CATTLE.

### I. RIGHT OF ACTION FOR KILLING OF See DAMAGES, RAILWAYS.

## CAUTIONNEMENT.

### I. EN APPEL See APPEAL, SECURITY.

## CAUTION SOLIDAIRE.

### I. DISCHARGE OF.

40. The discharge and subrogation of the plaintiff in the rights of a hypothecary creditor was held to discharge the defendant *caution solidaire* to the mortgage. *Bilodeau & Giroux*. 7, Q. L. R. 73. S. C. 1881.

## CERTIFICATE OF PROTHONOTARY.

### I. NOT PROOF OF EXECUTION OF DEED OF COMPOSITION.

41. The defendant was arrested under *captias* and gave bail under Art. 825, C. C. P. that he would surrender to the sheriff when required to do so by an order of the Court within a month from the service of such order on him or on his sureties. Later the plaintiff moved that as the defendant had not made an abandonment of his property under Art. 766 he should be imprisoned and also that the Court should give the order to surrender within a month. In answer the defendant said he had effected a composition with his creditors and filed a certificate of the prothonotary to that effect. *Per curiam*.—The only point is whether the certificate of the prothonotary is complete proof of the execution of such a deed between these parties, and it seems clear that it cannot be so held and still less is it a proof of the facts of the composition. We see however that this man may have a right of yet we see also that plaintiff is entitled to succeed completely because this right has not been established. We therefore render the judgment that might have been given below and we ordered that the motion be answered in writing within eight days and we discharge the inscription and condemn the defendant to pay the costs of review. *Osborne & Paquette*, 4 L. N., 50 S. C. R., 1881.

## CEMETERIES see BURIAL.

## CENS ET RENTES

### I. LIABILITY TO.

42. The 99th Art. of the Coutume de Paris which is as follows. "*Les détenteurs et propriétaires d'héritages chargés et redevables de cens et rentes ou autres charges réelles et annuelles sont tenus personnellement de payer*

*et acquitter icelles charges à celui ou ceux à qui elles sont dues, et les arrérages échus de leurs biens tant et si longuement que des dits héritages, ou de partie et portion d'iceux, ils seront débiteurs et propriétaires,*" does not apply to the constituted rent. *Wright & Moreau* 10 R. L. 544, S. C., 1881, & M. L. R. 1, Q. B. 456, 1885.

### CERTIFICATE.

- I. OF BAILIFF *see* BAILIFF.
- II. OF BURIAL *see* BURIAL.

### CERTIORARI.

- I. GROUNDS OF.
- II. HEARING OF.
- III. PRECLUDES PROHIBITION.
- IV. RIGHT TO ORDER.
- V. SERVICE OF.

#### I. GROUNDS OF.

43. A conviction for assault was set aside on certiorari, because the defendant was illegally condemned to pay for sewing up the plaintiff's lip. *Gauthier Exp.*, 4 L. N. 132, S. C., 1881.

#### II. HEARING OF.

44. The argument of a petition for certiorari will not take place till the case has been inscribed on the role (1) according to Art. 1231. C. C. P. *Bombardier & Jolie*, 12 R. L. 97, S. C., 1883.

#### III. PRECLUDES PROHIBITION.

45. When a writ of certiorari affords a sufficient remedy prohibition does not lie. *Audet & Doyon*, 10 Q. L. R. 20, S. C. R., 1885.

#### IV. RIGHT TO ORDER.

46. *Case of Narbonne Exp.* (II Dig. 150-97), reported at length 25 L. C. J. 330, Q. B., 1879.

#### V. SERVICE OF.

47. Where a writ of certiorari was served on two commissioners for the parish in which the judgment was rendered, but one of them took no part in the judgment attacked, and the one who did take part not having been served the writ having in fact been served

(1) If the opposite party has not already appeared and filed an appearance in the ordinary form, he may do so, immediately after the writ is regularly returned; and thereupon the case may be inscribed on the roll by either party to be heard in the ordinary manner.

by error on the wrong commissioner. *Held*, fatal and certiorari quashed on motion. *Belisle Exp.*, 4 L. N. 391, C. C., 1881.

### CESSION—*See* TRANSFER.

### CESSIO BONORUM—*See* CAPIAS, INSOLVENCY.

### CHALLENGE

#### I. RIGHT OF *See* CRIMINAL LAW.

### CHAMBERS

#### I. POWERS OF JUDGE IN *See* JUDGES, JURISDICTION.

### CHANGE

- I. OF ATTORNEYS *See* ATTORNEYS.
- II. OF DOMICILE *See* CIVIL STATUS, DOMICILE.

### CHARACTER

#### I. EVIDENCE AS TO *See* EVIDENCE

### CHARITABLE SOCIETIES.

#### I. ACT CONCERNING.

Whereas the proper working of Cap. 71 of the Consolidated Statutes of Canada, intituled: "An Act respecting Charitable, Philanthropic and Providential Associations," amended by the act of this Provincial Legislature, 32 Vict., Cap. 43, and the happy application of the beneficent efforts of such legislation have shown the propriety of extending it to other and analogous objects in this province; Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows: I, Section 1 of the said Cap. 71 of the Consolidated Statutes of Canada, and Sec. 1 of the said Act 32 Vict., Cap. 43 are consolidated into one section, which shall read as follows: "1. Any number of persons may unite themselves into a society in this province, with a view by means of voluntary contributions, subscriptions, gifts, or donations from the member of the Society or from the public, of making provision for those afflicted by sickness, reverses of fortune, and death, the widows and orphans or the lawful representatives of dead members for the rescue and reformation of fallen women, and for the prevention of cruelty to women and children, and for the purposes of attaining any other analogous object." Q. 45 Vict., Cap. 37, Sect. 1.

## CHARTER.

- I. OF BANKS *See* BANKS.  
 II. OF CITY OF MONTREAL *See* MONTREAL.  
 III. OF CORPORATIONS *See* CORPORATIONS.

## CHARTER PARTY.

- I. RIGHTS UNDER *See* AFFREIGHTMENT, CARRIERS.

## CHASSE.

- I. DROIT DE *See* GAME LAWS.

CHEATING—*See* FRAUD.CHEF LIEU—*See* JURISDICTION.CHEMINS—*See* MUNICIPAL CORPORATIONS ROADS.

## CHEQUES

- I. PRESENTATION OF *See* BILLS OF EXCHANGE &c.

## CHILDREN.

- I. CUSTODY OF WHEN ILLEGITIMATE.  
 II. LIABILITY OF TO SUPPORT PARENTS *see* ALIMENTS.

## III. MEANING OF WORD.

- I. CUSTODY OF WHEN ILLEGITIMATE.

48. To an action by a mother as tutrix for aliments against the defendant, father of the child, the defendant pleaded that the plaintiff was married and, with the authorization of her husband, in consideration of the sum of \$361.74 had discharged him from all responsibility for its future support and also that as father of the child he was entitled to the possession and custody of it. *Held* that in our law the authority of the father and mother of a natural child is absolutely equal, and when necessary the courts which have discretionary authority in such matters and may give the custody to the one or the other of them as their conduct and circumstances may seem to justify. *Coté & Deneault* 10 Q. L. R. 115, S. C. R., 1884.

## II. LIABILITY OF TO SUPPORT PARENTS.

49. Action by a father against two of his children for an alimentary allowance. The children pleaded in *forma pauperis* and severed in their defence. *Per curiam*.—The plaintiff has established a right of action, but the difficulty is the extreme poverty of the defendants. The children offer to board the father at their own table; but the case is complicated by the fact that the father now has his third wife, and what is to be done with the step mother or second step mother? The case is somewhat of a puzzle. I doubt whether the Court has power to order the father to go and live with the children, but even if the Court does possess this power, I am not disposed to think, it should be exercised under the circumstances of the case. The plaintiff's demand is moderate, being only for six dollars per month. The Court will order one of the children to pay 75 cents per week and the other 50 cents per week. *Labranche & Labranche* 6 L. N. 60, S. C. 1882.

50. In a similar case the court ordered one child to pay fifty cents per week, and three others forty cents each. No costs. *Lafon & Lafon*, 6 L. N. 84 S. C. 1883.

## MEANING OF WORD.

51. In a deed of donation creating a substitution the term "children" ("enfants") was held to include grandchildren, it not appearing from the terms of the deed that the word "children" was used in a restricted sense. *Joubert & Walsh*, 7 L. N. 134, S. C. R. and 12 R. L. 334 S. C. and 28 L. C. J., 39, 1884.

## CHINESE

- I. ACT RESTRICTING AND REGULATING THE IMMIGRATION OF *See* C. 48-49 VIOT. CAP. 71.

## CHOSE JUGÉE.

## I. WHAT IS.

52. The appellant sued in the Commissioner's Court as tutor to the minors, PROULX, and condemned in this quality, sued out a writ of *Certiorari* and in the affidavit of circumstances he declared: "qu'il n'était pas le tuteur des mineurs Proulx ainsi qu'allégués dans le dit jugement, et que la dite Cour des Commissaires n'était autorisée et n'avait aucune juridiction pour rendre jugement de cette manière. The Judge in the Superior Court, it would seem, set aside the judgment of the Commissioners' Court, owing to this allegation of the affidavit of circumstances. The plaintiff before the Commissioner's Court, now Respondent, sued Appellant in damages for this false statement, as he called it, and proved

as the measure of damages what he had lost by the setting aside of the judgment in the Commissioner's Court. *Held* that an action of damages will not lie against a party to a previous suit by his adversary, for an alleged false affidavit, by which each party obtained a final judgment in his favor in the previous suit. The first judgment is *res judicata*. *Boisclair & Lalancette*, 5 L. N. 267 & 1 Q. B. R., 289 & 27 L. C. J., 55. Q. B. 1881.

## CHURCH DUES *see* TITHES.

### CHURCHES.

#### I. ASSESSMENT FOR.

II. AUTHORITY OF BISHOP OF EPISCOPAL CHURCH TO BIND HIS SUCCESSORS IN OFFICE TO PAY MONEY.

#### III. DISTURBANCE OF.

IV. RIGHT OF TRUSTEES TO SUE ON BEHALF OF.

#### I. ASSESSMENT FOR.

53. Action *en répétition* of \$210 amount assessed against the plaintiff and paid by him to the construction of church vestry and sacristy in the parish of St David. The demand was based on the allegation that the plaintiff was not proprietor of it at the time the assessment was made but had belonged to a protestant church and was moreover outside the limits of the parish. *Held* that the amalgamation of an assessment for such purpose created a legal title in their favor and as long as the assessment was not set aside the persons assessed could not refuse to pay or recover where they had paid. *Lemieux & Syndics de St. David*, 10 Q. L. R. 325. S. C. 1884.

II. AUTHORITY OF BISHOP OF EPISCOPAL CHURCH TO BIND HIS SUCCESSORS IN OFFICE TO PAY MONEY.

54. The Trust & Loan Company, in 1875, recovered judgment against Bishop O. in his corporate capacity for the amount of their loan on mortgage to Trinity Church, one of the Episcopal churches in Montreal, the bishop being vested with the property on which the church was erected. An attachment was then taken out by the plaintiff in the hands of a number of persons to whom the Bishop had from time to time loaned money in his corporate capacity. In these proceedings the Synod of the diocese of Montreal intervened, and claimed that all these moneys thus loaned form part of the Episcopal endowment fund which was vested in the Synod as their property, subject &c. Bishop B., the successor of Bishop O., also intervened and claimed that the only fund out of which his salary as Bishop could possibly be paid was the revenue arising from said loans, and that the same was not liable

to attachment for the debt of Trinity Church. *Held* that the loan as authorized by Act of Parliament 38 Vic. Cap 63. was for the benefit of Trinity Church, and intended to bind the property of Trinity Church and no other, and therefore did not authorize the Bishop to bind his successors in office; that in any case the money belonged to the Synod and not to the Bishop, and all the contestations were dismissed. *Trust & Loan Company and Bishop of Montreal*, 4 L. N. 338, S. C. 1881.

### III. DISTURBANCE OF.

55. The plaintiff on behalf of her son a minor brought action of damages against the constable of a parish church for ordering him to kneel and otherwise humbling himself in the presence of the congregation. *Held* that the constable was in the performance of his duties in so doing and was not liable. *Wildebury & Brisebois*. 6. L. N. 276. and 12 R. L. 424, C. C. 1883.

### IV. RIGHT OF TRUSTEES TO SUE ON BEHALF OF.

56. The plaintiff and defendant were co-trustees, along with others, of a presbyterian church and in that capacity and before the passing of the statute of 1875 they all of them acquired land for the congregation and built a church. The union of the presbyterian churches raised a dispute as to the right to the property. The plaintiff belonged to the union party and the defendant to the anti-union. The plaintiff was described as suing in his quality of sole surviving and remaining trustee, legally appointed and authorized to hold the real estate, and representing the civil rights of the religious Congregation of Côte St. George, in said county in connection or communion with and forming part of the Presbyterian Church in Canada, suing in his said quality and on behalf of all the other members of the Congregation. In the deed the property was conveyed to the plaintiff and defendant and two others named "*en leur qualité de syndics de la congrégation Presbytérienne en connection avec l'église d'Ecosse des dites Côte St. George, St. Patrice partie du township de Newton attachée, et qui font et feront profession à l'avenir de la dite religion Presbytérienne.*" By Con. Stat. Lower Canada Cap. 19., it is provided that congregations when they wish to acquire lands for churches may "appoint one or more trustees to whom and to whose successors to be appointed in the manner set forth in the deed of conveyance the lands necessary for each of the purposes aforesaid may be conveyed, and such trustees and their successors forever by the name and by which they and the congregation for which they act are designated in such deed, may acquire and may institute and defend all actions at law &c., and the successors of the trustees appointed in the manner provided by a meeting of the con-

gregation, held as provided by that Act, have the same powers." *Held* that the plaintiff had no right of action as surviving trustee. *Morrison & McCuaig*. 4. L. N. 151, S. C. 1881.

## CHURCH FABRIQUES.

### I. POWERS OF.

57. In October 1880 plaintiff obtained a writ of *quo warrant* to against defendant requiring him to show cause why he occupied the office of school commissioner for the parish of Beaufort. Defendant being *marguillier en charge* justified under an agreement made between the curé and marguilliers of the Fabrique of the parish acting by the curé and the school commissioners of the municipality, executed before notary in December 1878, whereby the Fabrique ceded to the school commissioners by way of contribution to the school district No. 1, the use of the building belonging to the Fabrique near the parish church, which the Fabrique also thereby undertook to keep in repair such use and repair being valued at \$60 per annum. In consideration of this contribution the curé and marguilliers were to be school commissioners, and the curé was to have the nomination of the teacher. The Fabrique had fulfilled their part of the agreement by contributing the repairs and use of the building which the commissioners had enjoyed, and had in fact themselves recognized defendant as school commissioner by a resolution passed by them in December 1879 under the presidency of plaintiff himself who was the chairman of the school commission. The evidence showed that in 1839 at the instance of the then curé the inhabitants of the parish raised by voluntary subscription and loan the funds necessary to erect the building or school house in question on the ruins of the presbytery. The school was at first managed by trustees and continued to be so until 1849, when the then curé being of opinion that the trustees had appointed a teacher whose character he could not approve of appealed to the electors to put in force the school law and in consequence school commissioners were elected, the curé himself being one of them, and under the plea that the school house belonged to the Fabrique the objectionable teacher was refused admittance on the strength of a resolution of the Fabrique whereby the property in question was put under the charge and administration of the curé. Former *marguilliers* and others proved that the school had always been known in the parish as the Fabrique school. The school commissioners however from the time of their first election as mentioned continued to have the control of the school and even did the repairs to the building up to and including the year 1877. In 1878 they were done by the Fabrique in which year the agreement recited in the plea was

executed where by they assumed the repairs as part of their contribution. The Fabrique by a resolution of date 31st October, 1847, resolved that if ever they withdrew the occupation of the school house from the control of the commissioners they (the Fabrique) would pay off the money raised by loan for its construction. This money was afterwards paid by the school commissioners. *Held*, confirming the judgment of the Superior Court, that the building remained the property of the Fabrique and that the agreement made between the school commissioners and the curé acting in the name but without the express authorization of the Fabrique was valid in so far as to entitle the curé and *marguilliers en charge* to be school commissioners, and that the last clause, although invalid, as contrary to public order, does not annul the contract but must be treated as unwritten. *Charest & Veilleux*, 8 Q. L. R. 230, Q. B., 1881.

58. And in parishes where there are no schools belonging to the Fabrique it is permissible for the Fabrique with the consent of the school commissioners to contribute \$60 to the funds of the latter, by which the curé and warden in charge become its *ipso facto* school commissioners. *Id.*

## CHURCH ORGANS

### I. ARE IMMOVEABLE BY DESTINATION.

59. Opposition to the seizure and sale of a church organ on the ground that it was placed in the church as a permanency and was immoveable by destination. *Held* that under the terms of Articles 375-379 (1) of the civil Code that the opposition was well founded and must be maintained. *Binks & the Rector and Church wardens of the Parish of Trinity Church*, 25 L. C. J. 259, S. C. 1881.

## CHURCH PEWS

### I. RIGHT TO.

60 In a dispute concerning the right to a church pew occasioned by certain alterations that had been made in the church by the *Fabrique*.—*Held* that the lessee of a pew has a right of action *in factum* against third persons who interfere with him, in the enjoyment of his right and he may also have an

(1) Property is immoveable either by its nature or by its destination or by reason of the object to which it was attached, or lastly by determination of law. 375 C. C.

Moveable things which a proprietor has placed on his real property for a permanency or which he has incorporated therewith are immoveable by their destination so long as they remain there. 379 C. C.

action of damages if the trouble consists in acts rather than in dispute as to possession. *Champagne & Goulet*, 10 Q. L. R. 379, S. C. R. 1884.

## CIDER

### I. AN INTOXICATING LIQUOR.

61. Petitioner was convicted of selling liquor without license. It was pretended that the liquor sold was a mere imitation of cider free from any intoxicating principle. Cider is enumerated in the license act among intoxicating liquors, and the preparation in question did in fact contain over two per cent of alcohol. Conviction held good. *Noel exp.* 6 L. N. 150. S. C. 1883.

## CIRCUIT COURT

- I. APPEAL TO FROM COUNTY COUNCIL.
- II. JURISDICTION OF.
- III. PROCEDURE IN.

### I. APPEAL TO FROM COUNTY COUNCIL.

62. On appeal to the Queen's Bench. *Held* confirming the judgment of the Circuit Court that under articles 100 & 698 (1) of the Municipal Code, the Circuit Court had jurisdiction on an appeal from the County Council, concerning a by-law of the Local Council, when the County Council commits an irregularity. *Corporation de St. Maurice v. Dufresne*, 10 Q. L. R. 227 Q. B. 1884.

### II. JURISDICTION OF.

63. Plaintiff obtained judgment in the Circuit Court against the defendant and issued a *saisie arrêt* in the hands of the *tiers saisie* who declared that he owed nothing to the defendant. Plaintiff contested the declaration and by his contestation asked that the *tiers saisie* be condemned to pay \$20 debt, a years interest and costs in all amounting to \$120. The *tiers saisie* evoked the contestation into the Superior Court, and on the evocation it was *held* that the contestation of the declaration of the Garnishee was a separate and distinct issue from that of the original,

(1) Any *procès-verbal*, roll, resolution or other order, of a Municipal Council may be set aside by the Magistrates Court, or by the Circuit Court of the County or District, by reason of its illegality, in the same effect as a municipal by-law, and is subject to the provisions of Arts. 481 & 705, 100 M. C.

Any Municipal Elector in his own name, may by a petition, presented to the Magistrates Court or to the Circuit Court of the County or District, demand and obtain on the ground of illegality, the amendment of any Municipal by-law with costs against the Corporation, 698 M. C.

and when it involved an amount greater than the jurisdiction of the Circuit Court, it must be sent to the Superior Court. *Wright & Corporation of Stoneham*, 7 Q. L. R. 133, S. C. 1881.

64. Where upon judgment in the Circuit Court, the plaintiff took a *saisie arrêt* in the hands of the *tiers saisie*, who declared that a sum of \$1,150 which he owed to defendant had been transferred by the latter to others and he owed him nothing and the plaintiff contested asking that the transfer be set aside. *Held* that this was nothing, but a revocatory action for \$1,150 and the Circuit Court had no jurisdiction. *Lapointe & Belanger*, 7 Q. L. R., 316 S. C. R., 1881.

65. But as the parties themselves had not raised the objection, no costs would be awarded. *Ib.*

### III. PROCEDURE IN.

Art. 1097 of the said Code is hereby amended by striking out all the words after the words: "If the case is returnable in term," and by substituting therefore the following words: "The proceedings with respect to appearance, default, judgment by default, and relief therefrom, confession of judgment, written pleadings and the inscription of the case are the same as in actions returnable in vacation under article 1099." Q. 47 Vict., Cap. 8, S. 11.

CITY ATTORNEY—See ATTORNEY.

CITY OF MONTREAL—See MONTREAL.

## CIVIL CODE.

I. DIFFERENCE BETWEEN ENGLISH AND FRENCH VERSIONS, see CODE.

CIVIL ERECTION OF PARISHES—  
See PARISHES.

## CIVIL SERVANTS.

### I. WHO ARE.

66. The defendant being sued by the municipality in which he lived for the penalty imposed by the Art. 367a (1) of the Municipal Code for refusing to act as inspectors of roads pleaded that he was employed by the

(1) Justices of the Peace are exempt from serving as road inspectors, rural inspectors, or pound-keepers.

department of wood measurers at Quebec, and was consequently a civil servant (*fonctionnaire civil*) in the sense of Art. 209(1) of the same Code by which civil servants were exempt from such charges. *Held* that the defendant was not liable and action dismissed. *Corporation de St. Romuald & McNaughton*, 8 Q. L. R. 336, C. C., 1882.

### CIVIL SERVICE.

I. ACT CONCERNING, *see* C. 45 VICT., CAP. 4.

II. ACT AMENDING, *see* C. 46 VICT., CAP. 7., & 47 VICT., CAP. 15 & 48-49 VICT., CAP. 46.

### CIVIL SERVICE EMPLOYEES.

I. SUPERANNUATION OF, *see* C. 46 VICT., CAP. 8.

### CIVIL STATUS.

I. OF INSANE PERSONS PRIOR TO INTERDICTION.  
II. OF NUNS,

I. OF INSANE PERSONS PRIOR TO INTERDICTION.

67. Opposition to a seizure of defendants property on the ground that at the time of the seizure, defendant was insane and was in a lunatic asylum.—*Held* that prior to interdiction defendants status was unaffected by his condition. *Symes & Farmer*, 27 L. C. J. 185, S. C. 1883.

II. OF NUNS.

68. In an action to set aside an inventory and partage on a ground of fraud, a question was raised, "that at the date of his death the said A. C. had moreover two sisters who had made religious profession, approved by the Catholic Church and recognized by law. That the said Nuns made a cession of all their rights in the estate of the late A. C. their brother to H. C.; by deed of transfer executed before L. Notary, which transfer the said H. C. declared to have been made in the joint interest of himself and his brothers and sisters. That, moreover according to law, the said Nuns could not claim any share in the estate, being, by their religion vows civilly dead and incapable of inheriting." In rendering judgment the Court said "It was said

(1) The following persons are not bound to accept any municipal office, nor to continue to fill the same: All civil functionaries, the employees of the Federal and Provincial Legislatures, and the officers of the Militia Staff.

appellant appropriated this money, or a part of it, and our attention was particularly directed to appellant's evidence as a proof of his misdeeds. Now what is his story: he wanted to draw the money after his brothers death, but he was told at the bank that he could not do so then. Upon this, he borrowed some money from the bank, settled with his sisters the nuns, and as the family agreed to accept the bargain which appellant made with them, he credited himself with what he paid. We are now told he should have paid nothing, the nuns had no rights, they were civilly dead. If this be true what has H. more to do with it than the respondent? He can't be charged with the error alone, if error there be, and if the arrangement is to be set aside, then these ladies, or there communauté ought to be *en cause*, and their should be sufficient allegations and conclusions taken against them. But in fact, it seems they are not civilly dead, or rather, I should say, subject to civil disability, analogous in its legal relations to civil death. There is some doubt as to whether there are any nuns in this country in this position. I remember when the Art. 34 of the C. C. was under discussion great doubt was expressed as to whether there were any such disabilities in Canada, and the very guarded article of the Code, was inserted to cover a possible contingency. *Charlebois & Charlebois* 26 L. C. J. 364, Q. B., 1882.

### CLAIMS.

I. IN INSOLVENCY, *see* INSOLVENCY.  
II. OF PARTNERS, *see* PARTNERSHIP.  
III. TRANSFER OF, *see* TRANSFER.

### CLERGYMAN.

I. LIABILITY OF.

69. *For marrying minors.—Per curiam.*—Action of damages by the mother of a minor, against a clergyman in the Townships, for marrying her daughter while under age. There was no difficulty as to the fact that the appellant's daughter was a minor. The case turned upon another ground. The clergyman produced at *enquête* a license for the marriage of the parties, and there is a statute which says that a minister who marries a party having a licence is exonerated from all damages by reason of the person not being of age or other cause. There could be no damages against the minister, therefore, but there was this difficulty,—the license was not produced with the plea, but only at the *enquête*. A motion was made at the final hearing to reject the paper. The Court below granted the motion, but dismissed the action on the ground that the appellant had failed to prove any damages. His Honor was of opinion



that the Court should have allowed the party to file the license on giving notice to his opponent. This was not done, and the case was now brought into appeal. The Court here did not think that it ought to reverse the judgment, especially as there was very slight evidence of damage. The respondent, there could be no doubt, had a license. However, to show that parties cannot violate the rules of procedure with impunity, the Court would grant the respondent no costs on the appeal. *Couture & Foster*, Q. B. 1882.

### CLERICAL ERROR.

#### I. POWERS OF COURT OF APPEAL WITH REGARD TO *See* APPEAL.

### CLERKS.

#### I. DISMISSAL OF *See* MASTER AND SERVANT.

#### II. PRIVILEGE OF *See* PRIVILEGE.

### COAL.

#### I. PRIVILEGE FOR *See* PRIVILEGE.

### CODE CIVIL.

#### I. DIFFERENCE BETWEEN ENGLISH AND FRENCH VERSIONS.

70. In rendering judgment, on a question as to the liability of particular legatees the Court said there is no question as to the facts and the only matter in dispute is the interpretation to be put on the first sentence of Art. 889 C. C. (1) This sentence is indicated by the usual marks as new law. It is argued that the two texts differ essentially, that the French texts enacts that "l'héritier ou le légataire universel ou à titre universel n'est pas tenu de l'hypothèque," while the English text says that "the heir, or the universal legatee, or the legatee, or the legatee by general title, is not bound to discharge the hypothec" etc. There is a *nuance* of difference between the two texts, and it was evidently considered a point of some importance to decide which should be adopted as the most

[1] If before or since the will, the immoveable bequeathed have been hypothecated for a debt of the testator remaining still due, or even for the debt of a third person, whether it was known or not to the testator, the heir or the universal legatee, or the legatee by general title is not bound to discharge the hypothec unless he is obliged to do so by the will.

authoritative. It will be observed that there is no special rule of interpretation where difference between the two texts occurs in an article changing the existing laws. The general rules of interpretation alone apply to them. I say alone "for intention" of the legislator is only an ordinary rule of interpretation. Notwithstanding the absence of any special rule, on this matter, I am inclined to think that, all other considerations being equal, it would be a conclusive argument in favor of one or other text, that it was the one which was nearest to the old law. I believe there is a pretty general impression that the language of the draft, if it can be discovered, would be a tolerably decisive argument in favor of that text. It is also, I fancy, considered that the French text is to be favored when it purports to express what comes from the French law, and the English text where it expresses a rule of English law. I think the first of these laws has nothing in theory or in what actually took place at the codification to support it. Both texts are originals, both were discussed, and they were reported together. To my knowledge the one was not always a translation of the other. With regard to the second of these rules, it can only be accepted in a modified sense. That is to say when the words are purely technical, the original of the technicality, and not the original draft, is to be preferred. As an instance, I would refer to the case of the *Country of Drummond* and the *South Eastern Railway Company*, 24 L. C. J. p. 284. There we held that though the word "mortgage" was used in the statute, it could only mean that sort of security by real estate which our law contemplates; and we interpreted it to mean hypothec, without any consideration of the original draft of the Statute. Another instance of a text on which question might arise is Art. 2374. Referring to the Merchants Shipping Act of 1854, the French text uses the word "hypothèque" the English "mortgage" and hypothecation. If there be any difference, can it be doubted, that the English version would prevail. *Harrington & Corse*, 26 L. C. J. 108, Q. B. 1882, & 9 S. C., Rep. 412 Su. Ct., 1883.

### CODICIL—*See* WILLS.

### COERCION.

#### I. CONTRACTS OBTAINED BY, *see* CONTRACTS, FRAUD.

[1] The rules concerning the hypothecation of vessels by contract of bottomry are contained in the title of Bottomry & Respondentia, the mortgage and hypothecation of registered British Ships, are made according to the provisions contained in the Act of the Imperial Parliament, intituled The Merchant Shipping Act. 1854.

COERCIVE IMPRISONMENT. — *See* IMPRISONMENT.COHABITATION — *See* MARRIAGE.

## COLLATERAL SECURITY.

## I. RETURN OF.

71. When a person with whom bonds have been deposited as collateral security is in default to return them he is liable for the par value of such bonds. (1) *Paquet & Sénécal*, 7 L. N. 30, S. C. 1884.

## COLLECTOR OF CUSTOMS.

I. RIGHTS AND DUTIES OF, *see* CUSTOMS.

## COLLECTORS.

## I. CANNOT CHARGE AS FOR A LAWYER'S LETTER.

72. Un agent collecteur n'a pas droit d'exiger \$1.50 ni aucune autre somme pour le coût d'une lettre écrite à un débiteur lui réclamant sa dette, et que dans le cas actuel le défendeur sera condamné à rembourser au demandeur \$1.50, coût d'une prétendue lettre d'avocat par lui écrite au demandeur de la part du nommé F. R. et qu'il s'était fait payer en qualité d'agent. *Lachapelle et Larose*, 7 L. N. 353, C. C., 1884.

## COLLEGES.

## I. PROPERTY OF EXEMPT FROM TAXATION.

73. A house situated on the same lot of land as Morrin College in the City of Quebec to which it belonged, and occupied as a private dwelling by two of the professors of this College was held to be exempt from Municipal taxes under 29 Vic, Cap 57, Sec. 25, as employed for the purposes of education, although part of the salaries of the professors was deducted as rent. *The City of Quebec & The Morrin College*. 8. Q. L. R. 3, Rec. Ct. 1880.

COLLISION *See* MARITIME LAW.

## COLONIAL ATTORNEYS.

I. RELIEF OF *See* ATTORNEYS.

(1) In appeal.

## COLLOCATION

I. REPORT OF *See* DISTRIBUTION.

## COLLUSION.

I. EVIDENCE OF *See* INSOLVENCY.COLONS *See* SETTLERS.COMMENCEMENT DE PREUVES *See* EVIDENCE, ADMISIONS, PAROLE & C.

## COMMERCIAL CORPORATIONS.

## TAXES ON.

74. By the Act 45 Vict. Q. c. 22, "to provide for the exigences of the "Public Service" of the Province of Quebec, a tax was imposed on every bank, Insurance Co. and other commercial corporations doing business in the Province. The tax was imposed in proportion to the paid up capital of the banks, together with a tax on each office, &c. Some of the Corporations interested in the cases here determined have their principal office out of the Province, and some were incorporated in England or in the United States. In some cases the stock was held chiefly by persons not resident in the Province of Quebec. *Held* confirming the judgment of the Sup. Court, M. L. R. 1 S. C. 32. That the taxes imposed on Corporations by the Act in question are personal and direct taxes within the Province, and such as are authorized by the sect. 92 subsect. 2, of the B. N. A. Act 1867. A Corporation doing business in the Province is subject to taxation under sect. 92, subsect. 2, though all the shareholders are domiciled out of the Province; that even assuming that the taxes in question should be considered as not falling within the denomination of direct taxes, the local legislature had power to impose the same, inasmuch as they were matters of a merely local or private nature in the Province, within the meaning of the B. N. A. Act. sect. 92 subsect. 16. *Lamb & Sundry Banks &c.* M. L. R. 1 Q. B. 122, 1885.

## COMMERCIAL MATTERS.

## I. WHAT ARE.

75. In May 1879 the defendant sold to the plaintiff all the hemlock bark on the South East half of lot No. 16, in the second concession of Wickham, to be taken within the

twelve months following. In October of the same year they sold the lot and the bark not having been all taken within the time stipulated. *Held* in an action against them for the value that the sale of the bark was a commercial matter and they were jointly and severally liable. *Fee & Sutherland*. 9 Q. L. R. 55. S. C. R. 1882.

76. A farmer selling cordwood from his land is a trader dealing in similar articles within the meaning of Art. 1489 C. C. (1) *Canada Paper Company & British American land Company*. 5 L. N. 310 Q. B. 1882.

77. The sale and use of a patent for manufacturing purposes is a commercial matter. *Dery & Hamel*. 7 L. N. 405. Q. B. 1884.

## COMMERCIAL TRAVELLERS.

### I. RIGHT OF MUNICIPALITIES TO IMPOSE TAX ON II. SALARY OF, NOT PRIVILEGED.

#### I. RIGHT OF MUNICIPALITIES TO IMPOSE TAX ON.

78. The Act of Incorporation of the City of Three Rivers, 20 Vic. Cap. 28, Sec. 136 S. S. 7, authorized the Corporations to tax all peddlers and petty cheapmen (colporteurs ou marchands ambulants) bringing for sale into the City any articles of commerce &c. Under this authority the Appellants passed a by-law imposing a tax of ten dollars upon all strangers and non residents who should come into the said city to sell or offer for sale, goods by sample cards and other marks. The respondent a commercial traveller having offered goods for sale by sample but made no sale was condemned to pay the said tax and distress was taken against his effects. He resisted the seizure on the ground that the by-law was illegal as being in restraint of trade, as discriminating between residents and non residents and as not following the terms of the Statute. *Held* that the power granted to the Corporation by its act of incorporation need not be exercised in the precise terms of the statute and that it is sufficient if in the by-law, the terms of the Statute be substantially followed and the respondent was within the fair meaning and intent of the Act, a *Colporteur & Marchand ambulant*. *Corporation of Three Rivers & Major*, 8 Q. L. R. 181 & 11 R. L. 238 & 2 Q. B. R. 84 Q. B. 1881.

79. And *held* also that discrimination in taxation between residents and non residents is only an objection, when unjust and oppressive. *Id.*

(1) If a thing lost or stolen he bought in in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it, without reimbursing to the purchaser the price he has paid for it. C. C. 1489.

80. Neither could the tax in question be considered in restraint of trade. *Id.*

81. But in a case from St. John, N. B. decided in the Supreme Court, appellant brought an action against the Police Magistrate for wrongfully causing him a commercial traveller to be arrested and imprisoned on a warrant issued on conviction by the Police Magistrate for violation of a by-law made by the Common Council of the City of St. John under an alleged authority conferred on that body of 33 Vic. Cap. 4, passed by the Legislature of New Brunswick. Sec. 3 of the said Act authorized the Mayor of the City of St. John to license persons to use any art, trade, &c., within the City of St. John on payment of such sum or sums as may from time to time be fixed and determined by the Common Council of St. John, &c., and Sec. 4 empowered the mayor, &c. by any by-law or ordinance to fix and determine what sum or sums of money should be from time to time paid for license to use, any art, trade, occupation, &c., and to declare how fees should be recoverable and to impose penalties for any breach of the same, &c. The by-law or ordinance in question discriminated between resident and non resident merchants traders, &c., by imposing a license tax of \$20 on the former and \$40 on the latter. *Held* that assuming the Art. 33 Vic. Cap. 4, to be *intra vires* of the N. B. Legislature the by-law made under, it was invalid, because the Act in question gave no power to the Common Council of St. John, to discriminate between residents and non residents. *Jonas & Gilbert*, 4 L. N. 93 & 5 S. C. Rep. 356, S. C., 1881.

82. In another case the City of Quebec the petitioner in prohibition was proceeded against by the Corporation of the City for having in said city on or about the the third of February 1881, acted as a commercial traveller in selling hardware by sample, without having first obtained from the clerk of the city, the license required and without having first paid to the treasurer of the City the sum of \$60.00. He pleaded merely: Not guilty. On proof of the facts he was convicted and condemned to pay \$60 and costs. In his petition, the petitioner pleaded that the by-law under which he had been condemned was illegal, and assumed the corporation powers and rights not conferred on by statute. He also pleaded that the case against him had not been proved, and adduced evidence as in the original case. *Held*, distinguishing the case from *Major & Corp Three Rivers*, *Supra*, that a proceeding in prohibition was not an appeal, nor a revision and could not give rise to evidence of anything outside the question of jurisdiction as to which they could be no doubt, the by-law under which the conviction was had being in the very word of the statute, and the statute having been passed prior to confederation. Petition dismissed. *Piché & Corp. of Quebec*, 8 Q. L. R. 270, S. C. 1882.

83. And *held* that a merchant who sends out agents and travellers to take orders on samples

or sell goods as a travelling merchant is within the terms of the said statute and obliged to take out a license *Id.*

#### 11. SALARY OF NOT PRIVILEGED.

84. The opposant claimed \$372.80 *pour ses gages et salaires comme commis voyageur à l'emploi du défendeur à raison de cinq piastres par jour plus deux par cent sur les ventes* and to be paid by privilege under 2006 C. C. (1). *Held* rejecting the claim as to privilege that a commercial traveller was not a "clerk" within the meaning of that article. *Ross & Fortin*, 8 Q. L. R. 15. S. C. 1881.

### COMMISSION.

#### I. OF AGENT *See* AGENCY.

#### II. RIGHT OF BROKERS to *see* BROKERS.

#### III. SALE ON *see* SALE.

#### IV. TO TAKE EVIDENCE IN FOREIGN SUITS.

85. *Powers of judge in regard to.* Action instituted in the Court of Queen's Bench, Manitoba, from which a commission issued to take evidence at Montreal. In the course of the *enquête* objection being taken by defendants to the production of certain books called for by plaintiffs, and the commissioner having decided in favor of their production, his ruling was submitted for revision to a judge of the Superior Court. The defendants urged that there was no jurisdiction in a judge of the Court here; that the 31 Vic, cap. 76, did not apply to the Province of Manitoba, and cited in support of this pretension 1st 38 Vic. cap. 3, sec. 2; 2nd, 34 Vic, cap. 13 sec. 1, that those two acts relate to the entry of Manitoba into the Dominion. Section 1 of the last named act directing that the act passed in the first, second and third session of the Parliament of Canada, will apply to the Province of Manitoba the same as to the other four provinces, with the exception of the special act mentioned in a schedule at the end of said act, and that Manitoba is therefore in regard to said chapter 76 of 3 Vic., in the same position as the four provinces confederated by the B. N. A. The plaintiffs contended that when 31 Vic. Cap. 76 was passed Manitoba was in effect a foreign country and was not affected by it and that in any case by the Imperial Act hereinafter mentioned the Court here had full jurisdiction. *Held* maintaining the right of the judge to act. *Crawford & Morton. Dairy Farming Company*. 6 L. N. 188 S. C. 1883.

(1) Clerks, apprentices and journeymen are entitled to the same preference, but only upon the merchandize and effects contained in the store, shop or workshop in which their services are required. 2006. C. C.

### COMMISSION MERCHANTS.

#### WHO ARE.

86. In three cases the plaintiffs sued to recover \$50 levied on them by the City of Montreal under a by-law imposing a tax on brokers, money lenders and commission merchants, and which they had paid under protest. The plaintiffs were ship agents and in two of the cases were part owners of the vessels of which they were the agents. *Held* that the question was governed by the Arts. of the Code 1735 & 1736, defining brokers and commission merchants, and that as the plaintiffs did not come within that definition, they were not liable to the tax and had a right to recover. *Thompson & City of Montreal, Shaw & City of Montreal and Sidey & City of Montreal*, 4 L. N. 327, C. C. 1881.

### COMMISSIONER OF RAILWAYS.

#### I. CANNOT BE IMPEADED BEFORE THE ORDINARY TRIBUNALS.

87. The Commissioner of Railways under the Quebec Railway Act 1880 being a member of the Executive Council of the Province, represents the sovereign authority and cannot be impeaded before the Civil Courts of the Province, for an Act performed by him in the discharge of his duties as such commission. *Molson & Chapleau*, 6 L. N. 222, S. C. 1883.

### COMMISSIONERS.

#### I. AFFIDAVITS SIGNED BY, *see* AFFIDAVITS.

#### II. OF COMMON SCHOOLS, *see* COMMON SCHOOLS.

### COMMISSIONERS COURTS.

#### I. EVIDENCE IN.

#### II. JURISDICTION OF.

#### III. PROCEDURE IN.

#### IV. RECUSATION OF COMMISSIONER.

#### I. EVIDENCE IN.

88. Commissioners are bound to take notes of the evidence in writing. *Radiger ex parte*, 4 L. N. 305 S. C. 1881.

#### II. JURISDICTION OF.

89. On application for a writ of prohibition against the decision of the Commissioner's Court. *Held* that when the Commissioner's Court in question has been established for a certain parish and part of that parish has since been erected into a village, the Com-

missioner's Court has no jurisdiction in the Village except as provided by the Quebec Act. 41 Vic, cap 17. *Sirois & Guimond*. 11 R. L. 230, S. C. 1882.

90. And *held* also in a proceeding brought before the Commissioner's Court under the Art. 1188 of the Code (1) of Procedure, Paragraph 3, the jurisdiction was to appear on the face of the proceedings. *Ib*.

### III. PROCEDURE IN.

91. An opposant in a case before the Commissioners Court is not bound to proceed to proof on the return day, but is entitled to have a subsequent day fixed for trial. *La-moureux & Luttrell*. 4 L. N. 298. S. C. 1881.

### IV. RECUSATION OF COMMISSIONERS.

92. Commissioners of commissioner's courts may be recused like other judges. A judgment rendered by a commissioner personally interested in the suit will be annulled though the ground of recusation was not invoked at the trial. *Radtger Exp.*, 4 L. N. 306. S. C. 1881.

## COMMISSION ROGATOIRE.

### I. RIGHT to See PROCEDURE.

## COMMITMENT — See CERTIORARI.

## CONVICTION.

### I. COSTS IN.

### II. ERRORS AND OMISSIONS IN

### I. COSTS IN

93. In an application for Habeas Corpus by a person committed under the Quebec License Act.—*Held* that the magistrate may by the warrant of commitment order that the defendant shall pay the costs of the warrant and of conveying him to gaol and fix the amount of such costs. *Jones Exp.* Q. B. R. 100, Q. B. 1881.

(1.) The Commissioner's Court exercises an ultimate Jurisdiction in all suits purely personal or relating to moveable property, which arise from contracts or quasi-contracts and wherein the sum or value demanded does not exceed twenty-five dollars, and defendant resides. 1. In the locality of the Court; 2. In another locality, but in the same district and within a distance of five leagues, if the debt has been contracted in the locality for which the Court is established; 3. In a neighboring locality in which they are no commissioner's, or other Courts having jurisdiction to take cognizance of the matter in issue, or in which the commissioners cannot sit by reason of illness, absence or other inability to act, provided such locality is in the same district, within a distance not exceeding ten leagues.

### II. ERRORS AND OMISSIONS IN

94. On a petition for *habeas corpus*—*Held* that a commitment setting out a conviction "for that the prisoner unlawfully did commit an aggravated assault" (omitting the word "maliciously") is sufficient. *McIntosh Exp.*, 5 L. N. 4, Q. B., 1881.

95. And a typographical error in the date of a commitment, contradicted by the body of the document, does not invalidate the commitment. *Ib*.

96. And uncertainty of date in the commitment is not material where the date of sentence is apparent from the commitment and the record thereof brought before the Court or judge hearing the application for *habeas corpus*. *Ib*.

97. And the omission to state in the conviction that the prisoner was convicted on his plea of guilty though very irregular is nevertheless not fatal where the record is before the Court and shows that the prisoner pleaded guilty. *Ib*.

## COMMON SCHOOLS.

### I. AGREEMENT BETWEEN COMMISSIONERS AND FABRIQUE, *see* CHURCH FABRIQUES.

### II. APPEAL TO SUPERINTENDANT.

### III. APPOINTMENT OF COMMISSIONER.

### IV. DISMISSAL OF TEACHERS.

### V. ELECTION OF COMMISSIONERS.

### VI. ENGAGEMENT OF TEACHERS.

### VII. LIABILITY OF SEC. TREAS. OF, FOR MONEY STOLEN.

### VIII. POWERS OF SUPERINTENDANT OF EDUCATION.

### IX. REMOVAL OF COMMISSIONERS.

### X. RIGHTS OF TAXPAYERS WITH REGARD TO MONEY ARISING FROM SALE OF SCHOOL PROPERTY.

### XI. SCHOOL TAXES.

### XII. SECRETARY TREASURER.

### II. APPEAL TO SUPERINTENDANT.

98. The School Commissioners decided that a school-house should be built on a particular site. The appeal was as to the site, and the Superintendent selected another site, and ordered the Commissioners to build on the new site. *Held*, unanimously, that it is necessary that the petition in appeal to the Superintendent of Education should contain affirmatively the allegation that the appeal to the Superintendent is authorized by three visitors, if it appear that there was such authorisation. And it will be presumed the authorization existed when the sentence alleges it did, unless the fact be contradicted. *Lemieux & La Corporation de St. Jean Chrysostome*, 7 L. N. 406 Q. B. 1884.

### III. APPOINTMENT OF COMMISSIONER.

99. An election of school commissioner was set aside by the Court after which the

Lieut. Governor in Council on the report of the Superintendent appointed one G. in his place. Subsequently G. was dismissed by the Lieut. Governor, and defendant appointed. Action to set aside the appointment of defendant on the ground that the appointment was really in the superintendent, and that the Lieut. Governor had no power to dismiss and replace. *Held* that he had and action dismissed. *Bertrand & Lalonde*, 6 L. N. 365, S. C. 1883.

## IV. DISMISSAL OF TEACHERS.

100. Le 27 mars 1878 les Commissaires d'école de la Municipalité de la ville d'Iberville passèrent une résolution par laquelle ils autorisaient le Secrétaire-Trésorier à notifier l'Intimé et les deux seuls instituteurs de leur Municipalité scolaire, que leur engagement sera terminé le 1er juillet suivant. Une copie de cette résolution fut signifiée au domicile de l'intimé et une autre copie fut envoyée à C., qui était absent. Cette résolution ne contenait aucune raison pour justifier le renvoi de ces deux instituteurs. Plus tard, les Appelants entrèrent en pour parler avec l'Intimé et voulurent l'engager de nouveau et lui donner \$400 de salaire, sans le loger, au lieu de \$500 et du logement qu'il avait avant. L'Intimé n'a pas accepté ces propositions: il a offert aux commissaires de continuer ses services, et à l'expiration des premiers six mois, il a réclamé son salaire alléguant que son engagement n'avait pas cessé. *Jugé*:—10. Qu'un avis donné par les Commissaires d'école à un Instituteur qu'ils n'entendent pas continuer son engagement, n'a pas besoin d'être signifié personnellement. Mais qu'un avis collectif donné simultanément par une seule résolution, à tous les instituteurs d'une Municipalité scolaire, sans assigner de raisons est nul et ne peut interrompre pour l'année suivante l'engagement des Instituteurs à qui il est donné. *Les Commissaires d'école d'Iberville & Duquet*, 1 Q. B. R. 70, Q. B. 1881.

101. The plaintiff was engaged as teacher at the rate of \$120 a year in pursuance of a resolution of the defendants of date the 7th July, 1879. On the 19th April, 1880, three of the Commissioners met at the office of the sec-treasurer and told him to notify the plaintiff not to count on her engagement for the following year, which he did verbally. The three commissioners formed the majority of the members of the board but there was no regular meeting at the time, nor was there any entry on the minutes of the resolution to dismiss plaintiff. *Held* that she was entitled to two months notice in writing of her dismissal, and that after a resolution regularly adopted and entered to that effect. *Gauron & Les Commissaires d'école de St. Louis*, 7 Q. L. R. 251, C. C. 1881.

## V. ELECTION OF COMMISSIONERS.

102. On the contestation of an election of school commissioners. *Held* that where an

election of school commissioner has been held under circumstances which are unusual, and which lead the Court to believe that there has been a surprise of the electors and that they have been debarred from exercising their right to vote the election will be annulled. *Sauvé & Boileau*, 6 L. N. 257 & 27 L. C. J. 359, Q. B. 1882.

103. And it is necessary that five electors should demand a poll in the case of an election of school commissioners. *Id.*

## VI. ENGAGEMENT OF TEACHERS.

104. The plaintiff a school teacher alleged that the defendants four of whom were school commissioners combined together to injure her and with that object in view in September, 1878, maliciously and forcibly removed the windows and doors of a portion of the school house which she was in the occupation of as school teacher, as well as the stove pipe which served for the whole house thus rendering uninhabitable the other portion of the school house in which she was living, and causing her damage, for which she demanded a joint and several condemnation against the defendants. The acts complained of were admitted, but were attempted to be justified by the plea that plaintiff was not under engagement at the time and had no rights in the premises. It appeared that on the 3rd of April the school commissioners passed a resolution offering her the engagement at the reduced salary of \$120 and this offer was regularly communicated to her on the 4th. On the 12th. after a meeting at which it had been virtually decided not to decide as to the engagement of a teacher until the rate payers had been consulted, some of the commissioners went to the plaintiff and pressed her to accept or refuse then and there and she refused. On the 15th the meeting of the rate payers was held, and after it had been decided that they would have no model school and that consequently the plaintiff would not have the advantage which she had reason to hope for of being a teacher of a model school without reduction of salary, she came before the meeting and declared that she accepted the offer which had been already made. At a meeting held the next day for the purpose of deciding upon the engagement of a teacher the plaintiff acceptance in writing was laid before the meeting by the Sec.-Treasurer and read, before any action was taken by the commissioners. The offer of the commissioners of the 3rd April contained no limit as to the delay for acceptance and had not been withdrawn either on the 15th or 16th when the plaintiff accepted it. *Held* that the plaintiff was legally under engagement as school teacher, was rightfully in the occupation of the school house and the defendants had no legal justification for committing the acts complained of. *Devarenes & Hallé*, 7 Q. L. R. 252, S. C. R., 1881.

#### VII. LIABILITY OF SECRETARY TREASURER OF, FOR MONEY STOLEN.

105. Action under the provisions of 40 Vic. Cap. 22, Sec. 36 and 41 Vic. Cap. 6, Sec. 19, and by the Superintendent of Public Education against the Secretary Treasurer (respondant) of the School Commissioners for the Parish of St. Jean des Chaillons, and against his sureties to recover a sum of \$140 alleged to have been received by the secretary treasurer and not accounted for by him. The evidence showed that the government had transmitted by post for the school commissioners to the Secretary Treasurer, a cheque on the Montreal Bank for \$163.51, which he received on the morning of the 11th August 1878. He immediately attempted to have the cheque cashed but without success. He then informed the Chairman of the School Commissioners of the receipt of the cheque and of his unavailing attempt to have it cashed, adding that there was a pressing want of money to pay the school mistresses whose payments were long in arrears. The Chairman replied to this communication that it was probable that he would go to Quebec the following day, in which case he would cash the cheque. On the following day the chairman took the cheque to Quebec and cashed it at the Montreal Bank. Out of the money so received he took \$23.51 due to him by the School Commissioners and put the remaining \$140 in his pocket for them. On the evening of the same day he went to a public meeting held in Jacques-Cartier Hall in Quebec where the \$140 were stolen from him. He made an affidavit of the facts and set the police in motion to recover the lost money but without success. Subsequently the secretary treasurer prepared and submitted to the School Commissioners a detailed statement of the receipt of \$163.51 from the government, and of this sum entered the loss of \$140; this account so rendered was accepted and approved by the School Commissioners, and a sum which remained due to the secretary treasurer was paid to him. *Held* that there had been neither negligence or fault on the part of the respondent and that he was not responsible for the loss. *Ouimet & Verville*, 7 Q. L. R. 34 & 1 Q. B. R. 66 Q. B. 1880.

#### VIII. POWERS OF SUPERINTENDANT OF EDUCATION.

106. In 1865 the defendant was appointed Secretary treasurer of the municipality of the township of Roxton and acted as such until the 4th February 1877, when he resigned his office and a discharge was given him by the commissioners releasing him from all liabilities thereunder. Subsequently to such discharge, on the 30th June 1877 a division of the territory of the township and school municipality was made and there was erected two distinct school municipalities, that of

the township of Roxton and that of the village of Roxton Falls. There was no division made of the assets of the original municipality, but the plaintiffs representing the village of Roxton Falls made claim to some share therein, and among these assets as claimed by the new municipality, but not recognized by the old one, was a claim against the defendant arising as plaintiffs averred through the fraudulent misappropriation by defendant of moneys belonging to the old municipality, and which should have formed parts of these assets of which plaintiff sought a share. These conflicting claims not being adjusted the matter was referred to the Superintendent, who named a delegate to make the necessary revision of the accounts which defendant had rendered, and upon which he had obtained his discharge. On the 15th June 1881, the Superintendent rendered his decision, criticizing the defendants account and ignoring his discharge obtained from the Commissioners of the township, declared him to be a defaulter and to be indebted in a sum of \$617.07. *Held* that the Superintendent of Education has no jurisdiction in the revision of the accounts of a secretary treasurer of school Commissioners, whose resignation has been accepted, and a discharge granted him by his employers and the Superintendent of Education has no jurisdiction or authority in law to set aside a discharge granted to such Secretary Treasurer, but such discharge must be set aside by a competent tribunal under the provisions of 40 Vic. Cap. 22, Sec. 36 as amended by 41 Vic. Ch. 6, Sec. 19. *School Commissioners of Roxton Falls and Beauchemin*, 27 L. C. J. 109, S. C. 1883.

107. And even supposing the Superintendent of Education has jurisdiction the Statute. 41 Vic. Cap. 6, Sec. 16 can have no retroactive effect to enable him to revise the accounts of a secretary treasurer whose resignation has been accepted and a discharge granted to him previous to the passing of said statute. *Ib.*

108. And the action to have the Superintendent of Education declared executory under Sec. 16 of ch. 6 of 41 Vic. must show that the superintendent had the power to render such sentence, and that his jurisdiction appears on the face of the proceedings. *Ib.*

#### IX. REMOVAL OF COMMISSIONERS.

109. A president of school commissioners appointed under C. S. L. C. Cap. 15, Sec. 59 cannot be removed by the other commissioners before the expiration of the year for which he has been appointed. *Villeneuve & Charest*, 1 Q. B. R. 235, Q. B. 1881.

#### X. RIGHTS OF TAX PAYERS WITH REGARD TO MONEY ARISING FROM SALE OF SCHOOL PROPERTY.

110. L'un des arrondissements scolaires de la paroisse de Charlesbourg ayant été supprimé, il fut divisé en deux et joint aux deux autres

arrondissements contigus. Le terrain de la maison d'école et la maison elle-même furent vendus par les commissaires, et le produit—une fois les dettes de cet arrondissement payées—fut versé dans le fonds commun des écoles de cette paroisse. Le demandeur l'un des contribuables de l'arrondissement aboli, institua contre les commissaires d'écoles une action pour se faire payer sa part afférente des deniers provenant de la vente du terrain et de la maison d'école. *Held* that the money belonged to the common school fund and there was no such right of recovery. *Audy & Commissaires d'écoles de Charlesbourg* 9 Q. L. R. 103 C. C. 1883 and *Jobin & Commissaires d'Ecoles de Charlesbourg* 9 Q. L. R. 312, C. C., 1883.

#### XI. SCHOLL TAXES.

Section 77 of the said act is amended by adding thereafter the following:

" 77a. The school commissioners or trustees of any municipality may by resolution, passed by the said commissioners or trustees by a two third's vote, authorize their chairman, and upon his refusal any other school commissioners to enter into an agreement with any person, partnership or company, incorporated for carrying on any manufacturing or industrial undertaking whatsoever within the limits of such municipality, and commute for the payment annually of a certain determinate sum of money, for a number of years not in any case to exceed ten, all school assessments and rates that might be imposed on the buildings land and property occupied by such person, partnership or company for the purposes of such industry.

" Provided such agreement or commutation so to be made be afterwards confirmed and ratified by said trustees or commissioner as aforesaid." Q. 45 Vict. Cap 29.

Section 13 of the said Act 41 Vict., Cap. 6, is amended by adding, after subsection 5 b, the following:

" 5 c. It is lawful for the school commissioners and trustees in every school municipality, with the approval of the Lieutenant Governor in Council, upon satisfactory proof that the money to be levied had been *bona fide* expended in the construction of school houses, to impose a special assessment for the payment of debts contracted before the passing of this Act, by the said Commissioners or trustees for the construction of the said School houses over and above the amount allowed by law, or for any informality; and the amount of every such special assessment may also include the costs incurred by municipalities in suits respecting such previous assessment; 5 d. In cases where a special assessment has been so annulled, the rate payers who have paid their share thereunder shall not have the right to be reimbursed the amount so by them paid; but in any subsequent assessment levied under this act for the same purpose credit shall be given them for the amounts so paid by them upon the assessment annulled.

This clause shall not apply to assessments for the construction of common schools." Q. 48 Vic. Cap 31. Sec 3.

4. It shall be lawful for the superintendent to allow school commissioners or trustees to levee upon real estate, situated outside the limits of a town or village, but forming part of the school municipality of such town or village, a tax of not less than

one half of that levied upon real estate comprised with the limits of such town or village, whenever deemed right and proper.

#### XII. SECRETARY TREASURER.

Sec. 63 of the said act is amended by adding thereto the following:

" The secretary-treasurer may, under his signature, from time to time, appoint an assistant-secretary-treasurer, who may perform all the duties of the office of secretary, with the same rights, powers and privileges and under the same obligations as the secretary treasurer himself, except as regards security. " In the event of a vacancy in the office of secretary treasurer, the assistant secretary treasurer shall continue to exercise the duties of that office until the vacancy is filled.

" The assistant secretary treasurer shall enter into office as soon as he has received written notice of his appointment and he may be removed or replaced at pleasure by the secretary treasurer. In the exercise of his functions, he shall act under the responsibility of the secretary treasurer who has appointed him, and under that of the sureties of that officer." Q. 45 Vict. Cap. 29. Sec. 3.

#### COMMUNAUTÉ *See* MARRIAGE CONTRACTS.

I. ADULTERY OF WIFE DOES NOT DEPRIVE HER OF SHARE OF *See* MARRIAGE, SEPARATION.

II. OF PROPERTY BETWEEN CONSORTS *see* MARRIAGE CONTRACTS.

#### COMMUTATION

I. OF SHARES IN COMPANIES, *See* COMPANIES.

#### COMPANIES JOINT STOCK

ACT AMENDING GENERAL ACT *See* Q. 44-45 VIC., CAPS. 11-12.

#### II. ACTION BY FOREIGN CO.

*Must give security and file power of Attorney.*

#### III. ACTION ON NOTES OF.

#### IV. CALLS.

#### V. CAPITAL OF.

#### VI. DECLARATION TO BE FILED BY.

#### VII. ELECTION OF DIRECTORS.

#### VIII. FORFEITURE OF SHARES.

#### IX. INTERFERENCE OF COURT WITH AFFAIRS OF.

#### X. LIQUIDATION.

#### XI. POWERS OF.

*To redeem shares.*

*To sign notes.*

*To transfer all the property of the Company.*

#### XII. POWERS OF DIRECTORS.

#### XIII. POWERS OF SECRETARY.

#### XIV. PROCEEDINGS IN FORFEITURE OF SHARE.



## XV. RESOLUTIONS OF.

## XVI. RIGHT OF MEMBERS AND CREDITORS TO INSPECT BOOKS.

## XVII. SECURITY FOR COSTS BY.

## XVIII. SUBSCRIPTION.

## XIX. SURRENDER OF SHARES.

## XX. TRANSFER OF SHARES.

## XXI. UNINCORPORATED.

## XXII. VOTING AT MEETINGS.

XXIII. WINDING UP OF *See* C. 45 VIC. CAP. 23 & C. 46 VIC. CAP. 23.

## II. ACTION BY FOREIGN CO.

111. In an action by a foreign company having an office and place of business in this Province.—*Held* that they were nevertheless bound to give security for costs and file power of attorney. *Singer Manufacturing Co. & Beauceage*, 8 Q. L. R. 354 S. C. 1882.

## III. ACTION ON NOTES OF.

112. Where the defendants to an action on a note signed by their manager and President pleaded a general denial *without affidavit* but made no enquête, and the plaintiff made no enquête, and judgment was rendered on the note. *Held* that it was incumbent on the plaintiff under the general issue that the persons signing were respectively Manager and President of the Company, and were legally authorized to make the note. Action dismissed *sauf à se pourvoir*. *Delaney & St. Lawrence Steam Navigation Co.* 8 Q. L. R. 92 S. C. R. 1882.

## IV. CALLS.

113. Action by the plaintiffs as assignees of the Canada Agricultural Insurance Company, for \$200, amount of four calls. The first two calls were made by the directors of the Company prior to liquidation, the latter calls were made by the plaintiffs *es qualités* as liquidators of the Company's affairs. *Held* that under 41 Vic. Cap. 38, by which the Company was placed in liquidation the liquidators were duly qualified to make calls. *Ross & Guilbaut*, 4 L. N. 415, S. C. 1881.

114. Et qu'en l'absence de dispositions spéciales, le fait qu'un avis contenant les demandes de versements, a été mis à la poste à l'adresse des actionnaires sera une preuve suffisante de la demande de ces versements. *Ross & Converse*, 27 L. C. J., 143 & 6 L. N. 67 Q. B. 1883.

115. Respondent to an action for five calls on the shares subscribed by him in the Company, appellant, pleaded that he had subscribed the actions only on the solicitation of the Company's agent and on his express promise that he would never be called upon to pay. *Held* reversing the judgment of the Court below, and without deciding as to the legality of the plea, that the respondent had not proved his allegations and on the contrary that the production by the Company of the secretary's cer-

tificate that respondent held so many shares was sufficient proof of his liability to support the action. *Stadacona Insurance Co. & Cabana*, 2 Q. B. R. 380, Q. B. 1882.

116. In an action by liquidators for calls *Held* that the Company, now represented by the plaintiff, having accepted railway debentures in judgment of calls and disposed of the debentures, the plaintiff could not ask for the resiliation of this transaction, especially without offering back what had been received. *Ross & Angus*, 6 L. N., 292 S. C. 1883.

## V. CAPITAL OF.

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows:

The directors of any Company incorporated by special statute, may, if they see fit, at any time after the whole capital stock of the Company shall have been allotted and paid in but not sooner, make a by-law for increasing the capital stock of the Company, to any amount which they may consider requisite in order to the due carrying out of the object of the Company; Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted; and in default of its so doing, the control of such allotment shall be held to vest absolutely in the directors. Q. 45. Vict. Cap. 48 Sec. 1.

2. But no by-law, for increasing the capital stock of the Company, shall have any force or effect whatever, until after it shall have been sanctioned by a vote of not less than two thirds in amount of the shareholders, at a general meeting of the Company, duly called for considering the same, and afterwards confirmed by the lieutenant governor in council.

3. At any time, not more than six months after the sanction of such by-law, the directors may petition the lieutenant governor to confirm the same.

With such petition they must produce such by-law, and establish to the satisfaction of the Attorney General, so that he may report thereon, the due passage and sanction of such by-law, and the *bona fide* character of the increase of capital thereby provided for;

And to that end the Attorney General, or his deputy may take and keep of record any requisite evidence in writing, under oath or affirmation, and may administer every requisite oath or affirmation.

4. Upon due proof so made, the lieutenant governor in Council may confirm the said by-law: and notice thereof shall be forthwith given by the secretary of the Province in the Quebec *Official Gazette*; and thereupon, from the publication of such notice the capital stock of the Company shall be increased to the amount, in the manner and subject to the conditions set forth, in such by-law, and the whole of the stock, as so increased, shall become subject to the provisions of its acts of incorporation in like manner (so far as may be) as though every part of the stock of the Company originally subscribed.

5. There shall be paid for the confirmation of such by-law, the same fee as is payable on supplementary letters patent, granted and issued under the joint stock Companies Incorporation Act, (31 Vic. Cap. 25.)

Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows:

The capital stock of all joint stock companies shall consist of that portion of the amount autho-

vised by the Charter, which shall have been *bond fide* subscribed for and allotted, and shall be paid in cash.

The amount of paid up capital, from year to year, shall be published annually in a report to the shareholders of the Company. Q. 47 Vic. Cap. 73. Sec. 1.

The property accounts of a company shall represent only the amount of the actual *bond fide* outlay necessary for the undertaking. No stock shall be issued to represent the increased value of any property. Any such issue shall be null and void. Sec. 2. The practice commonly known as the watering of stock, is prohibited and all stock so issued shall be null and void. Sec. 3.

The capitalization of surplus earnings and the issued of stock to represent such capitalized surplus is also prohibited, and all stock so issued shall be null and void, and the directors consenting to such issue of stock, shall be jointly and severally liable to the holders thereof, for the reimbursement of the amount paid for such stock. Sec. 4.

No company shall declare a dividend the payment of which infringes upon or lessens the capital of the Company.

No dividend shall be declared or paid, which shall not have been actually earned by the Company. Sec. 5.

The annual dividend however may be supplemented or paid entirely out of the reserve fund, but payment of the dividend in this way, must be publicly announced to the shareholders at the annual meeting, and duly authorized by a resolution of the Company, in default of such resolution, the directors of the Company voting for or consenting to such increase shall be jointly and severally liable to the creditors of the dividend paid in excess of that actually earned. Sec. 6.

Every form and manner of fictitious capitalization of stock in any joint stock Company, or the issuing of stock which is not represented by a legitimate and necessary expenditure in the interest of such Company, and not represented by any amount in cash paid into the treasury of the Company, which has been expended for the promotion of the objects of the Company, is prohibited, and all such stock shall be null and void. Sec. 7.

Should any dividend be declared or paid in contravention of any of the provisions of this act, the directors voting for, or consenting to the payment of such dividend, shall be jointly and severally liable to the creditors of such Company for the amounts so paid. Sec. 8.

This act shall not have a retroactive effect. Sec. 9.

#### VI. DECLARATION TO BE FILED BY.

Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows:

The words: "and Insurance Companies" in the second and third lines of the first section and in the third line of the fifth section of the Act of this Province, 40. Vic. are struck out. Q. 45 Vic., Cap. 47. Sec. 1.

2. Every incorporated Company carrying on any labor, trade or business in this Province, except banks, which fails to make and file the declaration required either by sec. 1 or by sec. 4 of the Act above mentioned, incur a fine of four hundred dollars for each contravention.

3. The president, principal manager, or chief agent as the case may be, of any such incorporated Company, who fails to make and file such declaration, as it is required of him by sec. 5 of the act above mentioned, incurs a fine of two hundred dollars for each contravention.

4. Every fine imposed by this Act is recoverable before any Court having jurisdiction in civil cases to the amount of such fine, by any person suing as well in his own behalf as on behalf of Her Majesty, or by the Attorney General on behalf of Her Majesty.

5. One half of all fines recovered belongs to the party suing for the same, and the other half to the Crown and shall form part of the Consolidated revenue fund of the Province, unless the suit be brought on behalf of the Crown only, in which case the whole of the fine shall belong to the Crown for the uses aforesaid.

#### VII. ELECTION OF DIRECTORS.

117. Election of Directors in a joint stock Company made at a meeting called by a certain number of shareholders, before the delay fixed by provisions of the Statutes of Canada, 28 Vic. Ch. 32, for proceeding with such election has expired is illegal and irregular. *Williamson & Demers*, 12 R. L. 71, S. C. 1881.

#### VIII. FORFEITURE OF SHARES.

118. Action to have certain calls made by the directors of the Hochelaga Bank declared null and void, and certain resolutions by them under which the plaintiff stock was confiscated declared illegal, and to have the defendants ordered to restore the said stock and to register plaintiff as owner of it. The judgment turned on want of notice. The cashier wrote to plaintiff three times: 1st that the bank will take legal proceedings to recover if he do not pay. 2nd. "If you do not pay the account will be sent to our attorneys for collection." 3rd. "If you do not pay the directors will serve themselves as regard you to the privileges which the law gives them." *Held* insufficient. *Robertson & Hochelaga Bank*, 4 L. N. 315, S. C., 1881.

119. In an action to set aside the acts of Directors with respect to forfeiture shares. *Held*, that the company, defendant, had the right to confiscate and sell shares on which the calls were not paid within the time fixed by notices regularly given. It was not necessary to mention the shares in detail in the advertisement of sale, nor to set forth the amount paid on each share. The intention of the directors to sell the forfeited shares as if all past due calls were paid up, and subject to the payment of all future calls, was regular and legal. The action to set aside the forfeiture of shares, and to prevent the sale of the shares at public auction was dismissed. *Gilman & Royal Canadian Insurance Co.*, 7 L. N. 352 & M. L. R. 1 S. C. 1, 1884.

120. And in another case,—*Held*, that the sale of the K. stock mentioned in the plaintiff's declaration was regular and legal, and, moreover, the plaintiff having acquiesced therein, had no right to complain, and the defendants A., O., H. and M. had no need of re-election as directors on the 7th of February 1881, and such re-election did not legally affect their then status of directors until the

annual meeting of the company in 1885. *Gilman & Robertson*, 7 L. N. 353, & M. L. A. 1 S. C. 5. 1884. *Id.*

121. And the remaining directors were all duly and legally elected at the meeting of the company held on the 7th February, 1884, and all the said directors were duly qualified under the charter of the company. *Id.*

#### IX. INTERFERENCE OF COURT WITH AFFAIRS OF

122. The petitioners by agreement with B., the shareholder holding the majority of shares in a railroad company, obtained an option to acquire within two years a certain proportion of B.'s interest, and in the mean time no such option was declared, B. was to hold his shares as trustee for the petitioners, but he reserved the right to vote on the shares B., after obtaining large advances from petitioners, became insolvent and left Canada, and petitioners applied for an injunction to prevent the annual meeting on the ground that as they were precluded from voting by the reservation to B., the meeting of shareholders would be controlled by the minority, and they asked that the status quo be preserved until their option expired: *Held*, that the petitioners had not established a case justifying the interference of the Court, and the injunction was dissolved. *Stephen & Montreal, Portland & Boston Railway*, 7 L. N. 85, S. C. 1884.

#### LIQUIDATION.

123. Notwithstanding the prohibition contained in C.45 Vic. Chap. 23 sec 33(1) the liquidator of an insolvent Company may take proceedings either in his own name or in the name of the Company. *Banquet Hochleaga & Masson* 7 L. N. 359, & M. L. R. 1 S. C. 62, 1884.

#### XI. POWERS OF.

124. To an action for call on stock by the liquidators of an Insurance Company in liquidation the defendant pleaded that he had subscribed for 80 shares of the stock of the said company on which he had paid 10 per cent cash. That subsequently at a meeting of the shareholders duly called for that purpose it was decided in the interests of the Company to authorize the managing director to reduce the capital from a million to two hundred and fifty thousand dollars, by accepting a payment of fifteen per cent on the shares, and exchanging them with the shareholders for one quarter the number of shares fully paid up. That defendant agreed to this arrangement and after paying up 15 per cent of his shares, making twenty five per cent

paid in all, he received from the Managing Director twenty paid up shares for the eighty shares previously held by him; that he did this in good faith and in pursuance of the resolution of the shareholders authorizing it. The evidence of the liquidators went to show that if the arrangement had been fully carried out it would have realized a sum sufficient to pay all the liabilities of the company. *Held* that the company without being specially authorized could not reduce its capital nor purchase, nor accept a surrender of its shares, and the transaction was therefore *ultra vires* and void. *Ross & Fiset* 8 Q. L. R. 251, S. C. 1882.

125. *To Redeem shares.*—The defendant was the holder of 70 shares in the capital stock of the Canada Agricultural Insurance Company. The capital stock of the Company was \$1,000,000, of which at the time defendant subscribed for his stock, 10 p. c. had been paid up. In February, 1877, the Directors made a subsequent call of 10 p. c. but the Company being in difficulties it was resolved to apply to Parliament for an act to reduce their capital stock to \$250,000. As this would take some time a resolution was passed that any shareholder having already paid 10 p. c. upon his stock should have the option of paying 15 p. c. more and might then transfer the stock for which he had subscribed to the managing Director, who would transfer to the stockholder one fourth of the amount of stock, the same being fully paid up. Money was raised sufficient to pay up a certain amount of stock which was placed in the hands of the Managing Director for this purpose, and nearly one half of the Capital Stock of the Company was reduced in consequence. The plaintiffs were appointed Assignees of the Company under Chap. 38, 41 Vic. Canada and proceeded to notified the commuted stockholders that they would not recognize the transfer so made. *Held* that a transfer of shares from a stockholder in a Joint Stock Company, which is made with the object and has the effect of reducing the Capital Stock of the Company is null, and all resolutions of the Company and of the Directors authorizing such transfer is illegal and *ultra vires*. *Ross & Worthington*, 5 L. N. 140, S. C., 1882.

126. *To sign notes.*—To an action on a note the defendant Company pleaded that the president who had signed the note was not authorized. *Held* that under the Company's Act 1877, Sec. 66, the burden of proof was on the defendant to disprove the authority of the President. *Brice & Morton Dairy Farming Co.*, 6 L. N. 171. S. C. R., 1882.

127. *To transfer all the property of the company.*—During the progress of an action against the defendant for the balance of his subscription to the stock of the Company, plaintiff, an intervention in the nature of a *reprise d'instance* was filed setting forth that since the institution of the action by deed before notary the Company plaintiff sold and transferred for value to the intervening parties, amongst other claims, the one sued for

(1) In all proceedings connected with the Company a liquidator is to be described as the liquidator of the (name of company) and not by his individual name only.

in the present cause, with authority to continue the trial against defendant either in plaintiff name or in the name of the intervenants. The defendant answered that the deed of sale to intervenants was null as having been made when the Company was no longer in existence and in view of the liquidation of the affairs of said Company; that the transfer comprised all the assets of the Company which could not be sold *en bloc*; that it had not been legally authorized as all the shareholders had not concurred in it, but on the contrary a number of shareholders had protested against it, and it was therefore made in fraud of the rights of shareholders and of defendant. By the evidence it appeared that the transfer had been authorized at a meeting of shareholders called for that purpose, and after tenders had been called for the sale of the assets of the Company. *Per curiam*.—As to whether an incorporated Company has the right in virtue of a resolution passed at a meeting of its shareholders called for that purpose to sell its assets *en bloc*, it seems to be unquestionable; and whatever it is competent for the Corporation to do can be done by a majority of its members against the will of the minority. It follows from this that the power of a majority of the shareholders of a Company incorporated by charter or Act of Parliament is limited only by that charter or Act, unless those who compose the majority have restricted their powers by some special agreement. I. Lindley, *Partnership & Companies*, 612-613. *Compagnie de Navigation Union & Christin*, 4 L. N. 162, S. C., 1880.

## XXII. POWERS OF DIRECTORS.

128. In an action for calls. — *Held* that although the Directors who made the calls might not have been all duly qualified they nevertheless acted *bona fide* and their acts were not consequently null. *Windsor Hotel Co, and Date*, 27 L. C. J. 7, S. C. 1881.

## XIII. POWERS OF SECRETARY.

129. Where the secretary of a Company, signed a deed of composition and discharge without special authority to that end. *Held* not binding on the Company. *Bolt & Iron Company & Gougeon*, 7 L. N. 40, S. C. 1884.

## XIV PROCEEDINGS IN FORFEITURE OF CHARTER.

130. Petition by the Attorney-General, under C. C. P. 997, (1) praying that the defendants, for reasons given should be declared to

have forfeited their charter. The case was before the Court on the merits of an *exception à la forme* made by defendants on the ground that the proceeding should have been in the name of the Attorney-General of the Province of Quebec. *Held*, that the Attorney-General for the Province of Quebec had a right to petition, under C. C. P. 997 to have it declared that the Montreal Telegraph Company had forfeited their charter. *Loranger & Montreal Telegraph Company*, 5 L. N. 429, S. C. 1882.

## XV. RESOLUTIONS OF.

131. The resolution of a Joint Stock Company duly certified as such and filed in the case can only be attacked by improbation. *Desmarais & Mutual Benefit Society of Joliette*, 12 R. L. 198, S. C. 1882.

132. And where the resolutions or by-laws of such company impose a general penalty for their violation and also a particular penalty for a particular violation, a particular penalty is the only one which can be imposed. *Id.*

## RIGHT OF MEMBERS AND CREDITORS TO INSPECT BOOKS.

133. The shareholders and creditors of a joint stock company have a right to demand inspection of the minute books of the directors; when it appears by the evidence that said minute books may contain certain entries required to be kept in the company's books under 40 Vic., cap. 43 § 36. (1) *Anders & Hagar* 6 L. N. 83, S. C. 1883.

the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises or exercises any power, franchise or privilege which does not belong to it or is not conferred upon it by law: It is the duty of Her Majesty's Attorney General for Lower Canada to prosecute, in Her Majesty's name, such violations of the law whenever he has good reason to believe that such facts can be established by proof, in every case of public general interest, but he is not bound to do so in any other case unless sufficient security is given to indemnify the government against all costs to be incurred upon such proceeding.

(1) The Company shall cause a book or books to be kept by the Secretary or by some other officer especially charged with that duty, wherein shall be kept recorded.—A copy of the letters patent incorporating the company, and of any supplementary letters patent and of all by-laws thereof; The names alphabetically arranged, of all persons who are or have been shareholders. The address and calling of every such person, while such shareholder. The number of shares of stock held by each shareholder. The amounts paid in and remaining unpaid, respectively on the stock of each shareholder; The names, addresses and calling of all persons who were or have been Directors of the Company, with the several dates at which each became or ceased to be such Director; A book called the Register of Transfers shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the Company.

(1) In the following cases: Whenever any association or number of persons acts as a corporation without being legally incorporated or recognized;

Whenever any corporation, public body or board, violates any of the provisions of the act by which it is governed, or becomes liable to a forfeiture of its corporate rights, or does or omits to do acts

## XVIII. SECURITY FOR COSTS BY.

134. A foreign company which has a place of business in the Province of Quebec is not bound to give security for costs in an action instituted in this province. *Victoria Mutual Fire Insurance Co. & Carpenter* 4 L. N. 351, S. C. 1881.

## XVII. SUBSCRIPTION

135. The defendant being sued for the balance of his subscription to the stock of the company plaintiff, pleaded that the promoters promised to take goods for the amount of the subscription and called them in *en garantie*, which being dismissed he further pleaded that the company had forfeited its charter by non user during three years and was therefore not in existence. *Per curiam*—The non-user of the charter during three consecutive years at one time is not applicable under the provisions of the Act 31 Vic. Cap. 25 Sec. 32. It may be true that the Company, plaintiff, has been for three years without any books but during this same period the plaintiff availed itself of its charter for the collection of its debts and for the winding up of its affairs generally. Moreover it is very doubtful if such a forfeiture as is claimed here has not to be declared before it takes effect. *Vide* 1st Broom and Hadley's Commentaries 586-7 and Articles 1016, 1017 and 998 C. C. P. (1) *Compagnie de Navigation Union & Christin* 4 L. N. 162, S. C. 1890.

136. And on proof of the sale of all the assets of the Company to the intervenants together with the debts and claims defendant was condemned to pay the amount sued for to them. (2) *Ib.*

137. In an action for calls.—*Held* that a stock subscription in a Company to be incorporated is binding on the subscribers notwithstanding that the act of incorporation subsequently obtained by persons other than the

(1) The summons for that purpose must be preceded by the presenting to the Superior Court in term or to a Judge in vacation of a special information, containing conclusions adapted to the nature of the contravention and supported by affidavits to the satisfaction of the Court or Judge, and the writ of summons cannot issue upon such information without the authorization of the Court or Judge.

1016. Any person interested may bring a complaint whenever another person usurps, intrudes into or unlawfully holds or exercises; Any public office or any franchise or privilege in Lower Canada; Any office in any corporation or other public body or board, whether such office exists under the common law or was created in virtue of any statute or ordinance.

1017. Such complaint is brought before the Superior Court or before a Judge of the said Court, but the writ of summons cannot issue without leave of the Court or Judge obtained in the manner mentioned in art. 998 and the same delays and formalities are observed in the proceedings as in the preceding section. 998 C. C. P.

(2) See ante. Art 127.

subscriber, declares that the corporation shall consist of the persons named in the Act, of whom the subscriber is not one, and of such persons as should thereafter subscribe for shares in said corporation and notwithstanding that the person so subscribing never renewed his subscription, and never took part in any way in the affairs of said corporation. *Windsor Hotel Company & Date*, 27 L. C. J. 7, S. C. 1881.

138. To an action for calls the defendant pleaded a variety of pleas, *inter alia* that the company was insolvent at the time the shares were transferred to him, that the transfer had been obtained by fraud, that the company was illegally incorporated, &c. Evidence that defendant fully understood the position of the Company when he accepted the transfer. Plea dismissed and judgment for amount claimed. *Colonial Building Association & Fletcher*, 4 L. N. 374. S. C., 1881.

139. To an action for unpaid calls the defendant pleaded that the corporation had no legal existence for want of compliance with certain preliminary formalities, *Held* following *Windsor Hotel Company and Murphy* (1) & *Windsor Hotel Company & Lewis* (2) that defects in the organization of a company cannot be pleaded in answer to an action for call. *Cie de chemin de fer de péage de Pointe Claire & Valois*, 4 L. N. 334, C. C. 1881.

140. Judgment reversing *Windsor Hotel Company & Lewis* (II Dig. 171, 162) reported at length, 26 L. C. J. 29 Q. B. 1881.

141. Illegal acts on the part of the directors of a company cannot be set up in defence to an action for calls by liquidators or assignees representing the creditors of the company. *Ross & The Canada Agricultural Insurance Company* (3) 5 L. N. 23, S. C. 1881.

142. The defendant subscribed for one share in the capital of a company about to be incorporated. The name of the proposed company was changed in the Act of incorporation from the "Lawlor" Manufacturing Company, to the Belmont Manufacturing Company and the list of shareholders filed in the office of the Provincial Secretary did not contain the name of the defendant. *Held*, that the change of name, and the omission to insert the defendant's name in the list of shareholders were immaterial, and that the subscription was binding (4). *Belmont Manufacturing Company & Arless*, 7 L. N. 50 and 28 L. C. J. 117, S. C. 1884.

## XIX. SURRENDER OF SHARES.

143. The plaintiffs in their quality of assignees of the Canada Agricultural Insurance

(1) II Dig. 171-160.

(2) II Dig. 171-162, see Addenda to vol. II.

(3) This is evidently a misprint, as the Canada Agricultural Insurance Company was really the plaintiff in these cases, for whom *Ross & al.* sued.

(4) Reversed in appeal 1 M. L. R., Q. B. 340, 1885.

Company instituted an action against defendant to recover four instalments of 10 per cent each on 10 shares which he held in the stock of the Company. The defendant pleaded in substance that he had transferred his shares to the Manager of the Company for a consideration and had been discharged. *Held* that unless specially authorized by its charter that the Company could not buy in its stock, nor reduce its capital, nor accept a surrender of its shares in the hands of its shareholders, so as to discharge them from their responsibility and that the transfer thus pleaded by defendant was radically null and "*ultra vires*" and was no answer to the action. *Ross et al. & Dusablon*, 10 Q. L. R. 74, Q. B. 1883.

#### XX. TRANSFER OF SHARES.

144. Where an opposition by a wife claiming certain shares in the Quebec street Railway Company, as having been given to her by her marriage contract was contested on the ground that no transfer or change of name had been made in the books of the Company. *Held* that in the absence of anything in the charter or by-laws of the Company to that effect that it was not necessary to prove the property in the wife. *Whitehead & McLaughlin*. 8. Q. L. R. 373. S. C. R. 1882.

#### XXI. UNINCORPORATED.

145. *Proceedings against*—Petition under Art. 997 C. C. P. (1) to restrain defendants from acting illegally as a corporation under the name of the Silver Plume Mining Company, plea that defendants were a private association and never held themselves out as a corporation to the knowledge of the relator. The proof was that they were regularly organized as a company. The capital was set down as a million divided into 10,000 shares, one of the defendants was President another Vice President another secretary and others directors; under the constitution and by-laws the stock was to be issued to a trustee who was to sign all transfers and certificates

(1) In the following cases; whenever any association or number of persons act as a corporation without being legally incorporated or recognized; whenever any corporation public body or board, violates any of the provisions of the acts by which it is governed or becomes liable to a forfeiture of its rights, or does or omits to do acts the doing or omission of which amounts to a surrender of its corporate rights privileges and franchises or exercises any power, franchise or privilege which does not belong to it, or is not conferred upon it by law: It is the duty of Her Majesty's Attorney General for Lower Canada to prosecute in Her Majesty's name such violation of the law whenever he has good reason to believe that such facts can be established by proof in any case of public and general interest, but he is not bound to do so in any other case unless sufficient security is given to indemnify the government against all costs to be incurred upon such proceedings,

to shareholders; by Art. 1 of the constitution the Company was to be a corporation, and by Art. 7 it was to have a corporate seal. Certificates were issued with the corporate seal showing the number of shares which each represented. *Per Curiam*.—The Court has no difficulty in deciding this case. The constitution of the Company shows it to be a corporation. It has a corporate seal. It has a board of directors with power to make by laws. All these circumstances shew that the defendants have assumed to act as a corporation and under the Art. in question was clearly illegal, and the conclusions of the Attorney General should be granted. (1) *Attorney General & Dorion* 4. L. N. 108. S. C. 1881.

#### XXII. VOTING AT MEETINGS.

146. Where a shareholder asked for an interim order to restrain persons from voting on certain shares, and it appeared that the shares had been held by the defendants for more than a year, to the knowledge of the petitioner, an injunction was refused, more especially as the petitioner had a remedy by *quo warranto*, if he were wronged by an illegal vote. *Gilman & Robertson*, 7 L. N. 60, S. C. 1884.

#### XXIII. WINDING UP OF.

147. The plaintiff sued defendant and took a seizure before judgment in the hands of the Niagara District Fire Ins. Co., against which the defendant had a claim for loss. The plaintiff obtained judgment against the defendant and the Insurance Company by default. In execution he took a new seizure of some of the members of the Company, who were indebted to him. The Receiver intervened setting up his appointment in the Court of Chancery in Ontario, the incorporation of the Company and its insolvency. The defendant previous to this had filed his claim and the pretension of the receiver was that the plaintiff could only be substituted in the place of the defendant and receive his dividend. The plaintiff contested this intervention upon a number of grounds of a formal character by which he attacked the appointment and status of the intervenant. *Held* that the Courts of the Province to which the Company in liquidation belonged had the sole right to take cognizance of any defects in the status of the receiver. *Pacaud & Fournier*, 10 Q. L. R., 54, S. C. R. 1883.

148. And *held* also that the Receiver so named could only *ester en jugement* in this Province by alleging and proving his appointment, and the law which authorizes him to exercise that right in the Province in which he was appointed. *Ib.*

149. *Held* also that the claims which a corporation, belonging to another part of the Dominion, possesses in this Province are mo-

(1) Confirmed in Q. B. 4 L. N. 372.

veables which may be seized in execution of a judgment of the Courts of this Province, and the money arising from them may be distributed according to the rights of the creditors in this Province, and the person appointed by a Court outside of this Province to liquidate the affairs of such a Corporation cannot oppose the seizure and distribution of such claims. *Id.*

### COMPARUTION—See PROCEDURE APPEARANCE.

## COMPENSATION.

- I. OF ATTORNEYS COSTS.
- II. OF DEBT DUE THE CROWN.
- III. OF UNLIQUIDATED DAMAGES.
- IV. RIGHT OF.
- V. WHEN LIES.

#### I. OF ATTORNEYS COSTS.

150. The costs due on a judgment may be legally paid to and compensated by a debt due by the Attorney of record of the party to whom such costs are awarded, notwithstanding that such costs have not been awarded by distraction to the attorney, in the absence of proof by the client that he had paid his attorney's costs. *Kilgour & Harvey*, 27 L. C. J. 138, S. C. R., 1882.

#### II. OF DEBT DUE THE CROWN.

151. In the distribution of a lot of land the Crown was collocated for \$140, capital of a life rent which it had on the property and \$226.80 arrears for 27 years. This was opposed by another hypothecary creditor on the ground that the Crown has no greater privilege than a subject, and could therefore only claim for five years. *Held* that while the Crown had a right to be paid the entire amount due as against the debtor of the arrears that it had no greater privilege than the individual and the collocation must be reformed. *Banque Nationale & Davidson*. 8 Q. L. R. 319, S. C., 1881.

#### III. OF UNLIQUIDATED DAMAGES.

152. Action to recover freight under a charter party. Plea *inter alia* that the cargo was damaged by plaintiffs fault, and the freight should be compensated by the damage *pro tanto*. Demurred to on the ground that a plea of compensation for damage will not lie against a liquidated claim. *Per Curiam*.—I overrule the demurrer. It is merely a matter of form and under our procedure quite unimportant. It may be admitted that the demurrer would lie in England, but unless the English procedure is to govern here

I must adhere to our practice of allowing easily liquidated damages to be made ground of compensation. The case of *Gaherty & Torrance* (1) is directly in point. The judgment there, in express terms, allowed the plea of compensation for damage against the action for freight. *Bozzo & Moffatt and Nadeau & Charrette*. 4. L. N. 61., S. C. 1881.

#### IV. RIGHT OF.

153. The debtor of a partnership, when sued after the dissolution of the partnership, may set upon compensation, a debt due him by one of the partners. *Gauthier & Lacroix*. 12 R. L. 508, Q. B. 1868.

154. Action to recover the amount of a cheque given by the defendant to plaintiff for the amount of \$3,333.24, of date 4th February 1880, for part of the price of a piece of land; plea of compensation for the amount of \$5,790.96, consisting of the following items: 1. \$414.16 for commutation money in favor of the Seminary of Montreal. 2. Corporation assessments paid by defendant for plaintiff, \$979.96. 3. 1,000 being the amount of a promissory note paid by defendant on the 31st of March 1880, in discharge of the plaintiff. 4. \$1,632, being £408 contained in a discharge and subrogation of date, 25th April 1866, by S. D. to defendant who paid him this sum as surety for plaintiff. The pretensions of the plaintiff were: 1. That Defendant could not oppose in compensation any of his claims, because the action was founded upon a cheque given in payment of the price of a piece of land, and anterior claims could not be set up in compensation, nor subsequent claims not clear and liquidated. 2. That all the payments that he could make for plaintiff, were made with the moneys of plaintiff which he had in hand to the amount of more than \$100,000. 3. That he owes to plaintiff, and owed at the date of these pretended payments, the three written acknowledgements of 1873, 1874, for \$2,881, \$1,050, 1,000, with interest, further \$1000, brewery, &c. *PER CURIAM*.—What the defendant may have paid for the Plaintiff will enter into the account which he owes him, and what is now claimed is beyond the particulars of this account. It was part of the price of the land considered as paid cash by a cheque. The Court is of opinion that the sum of \$414 for commutation, and the sum of \$979.90 for taxes, should go in deduction of the cheque sued upon, but no others. *Dorion & Dorion*, 5 L. N. 130, S. C. 1882.

155. An account for services rendered by a working laborer may be set up in compensation of an amount due as interest on money lent. *Corporation Ste Marie Monnoir & Brunelle*, 12 R. L. 110, S. C. 1882.

(1) 6 L. C. J. 313.

156. The defendant ordered harness to be made by a harness maker named P. P., made the harness and delivered it to the defendant, the price being \$30; nothing being said as to the time or mode of payment. P. having learned or suspected that the defendant was the holder of a note against him made in favor of one B. he transferred to plaintiff the claim for the harness. This claim was duly served on defendant, and plaintiff immediately took action. Defendant pleaded to this action that at the time of making the harness he was the owner of the note referred to, whereas on the other hand the proof showed that plaintiff had given no consideration for the claim for the harness, and was only a *prête nom* for P. *Held* maintaining the action that a creditor who buys from his debtor on pretence of going to pay cash would afterwards set up some claim in compensation is not in good faith, and the compensation will not be allowed. *Daoust & Geoffrion* 12 R. L. 401, C. C. 1883.

157. According to the rule governing compensation, a claim of the defendant which was for money lent, was held not to be of the same nature as the claim of the plaintiff, which was for the return of a pledge, and compensation between them will not lie (1). *Pausé & Senecal* 28 L. C. J. 161, S. C. 1884.

158. Merits of an answer in law to a plea of compensation. The action was to recover the sum of \$398.89, amount of a piece of land. The plea set up an indebtedness by plaintiff as universal legatee of the alleged debtor of \$1,022, consisting of: 1st. \$111.25 arising out of certain joint transactions between defendant and deceased. 2nd. \$206.17, paid out by defendant for deceased. 3rd. \$519.60, money received by the deceased to the use of defendant. 4th. \$185.25 amount of a bill for professional services rendered by defendant as a medical man to the deceased. *Held* that an indebtedness arising out of an alleged joint transaction between the defendant and a deceased person, cannot be pleaded in compensation to an action by the universal legatee of the latter for a *prix de vente*. *Martin & Dansereau*, 7 L. N. 109, S. C. 1884.

159. But monies paid out by defendant for deceased; monies received by the deceased to the use of defendant, and the amount of a bill for professional services rendered by the defendant as medical attendant to the deceased, may be pleaded in compensation to an action of the nature mentioned above. *Ibid.*

#### V. WHEN LIES.

160. Action for \$41.02, instituted in the Superior Court, commenced by issuing a *capias*, August 10, 1880, followed by a seizure on the 27th of the same month. A *capias* had first issued in July, returnable in August,

(1) In appeal.

but the plaintiffs, fearing that their proceedings were irregular, discharged the defendant from arrest, and took out a second writ.

*Held* that a claim of unliquidated damages *ex delicto*, e. g., damages caused by wrongful issue of *capias*, cannot be pleaded in compensation to an action for goods sold. *Lucke & Wood*, 6 L. N. 98, S. C. 1883.

#### COMPOSITION.

1. OF CLAIMS IN INSOLVENCY *see* INSOLVENCY.

COMPROMIS—*See* ARBITRATION.

#### COMPTE.

I. ACTION EN REDDITION *DE see* ACTION.

CONDITION PRECEDENT—*See* SALE.

#### CONFESSION.

I. OF JUDGMENT *See* JUDGMENT, PROCEDURE.

#### CONFISCATION.

1. OF PROPERTY TO CROWN.

Her Majesty by and with the advice and consent of the Legislature of Quebec enact as follows:

Property that has devolved or shall devolve, upon the Crown by escheat, and property confiscated for any cause whatever, except for crime are under the control of the Commissioner of Crown Lands. Q. 48 Vict. Cap. 10, Sec. 1.

Such property may be sold, ceded and transferred by the Lieutenant Governor in Council upon such conditions as he may impose. Sec. 2.

The Lieutenant Governor in Council may also dispose of the whole or part of such property gratuitously, with or without conditions, in favor of any person whatever, with the view either of transferring it to some person having claims to exercise or equitable rights against the person who had been proprietor, or to carry out the intentions or wishes of such person, or to reward those who discovered or made known the existence of such property. Sec. 3.

The Lieutenant Governor in Council may also dispose of gratuitously, or by onerous title, in the manner regulated by sections 1 and 2, of this act, all interest in, rights over or pretention to the said property; and the transferee may in his own name apply to the courts to be placed in possession and adopt all proceedings which the crown might adopt. Sec. 4.

This act shall not apply to confiscated or escheated property with respect to which there exists special statutes. Sec. 5.



## CONFLICT OF LAWS

I. IN MATTERS OF INSURANCE *See* INSURANCE.

## CONFUSION

I. WHEN ARISES *See* PAYMENT DELEGATION OF.

CONGÉ DEFAULT—*See* PROCEDURE.

CONJUNCTIVE AND DISJUNCTIVE  
—*See* CAPIAS

CONSEIL DE FAMILLE *See* FAMILY COUNCIL.

CONSEIL JUDICIAIRE *See* JUDICIAL ADVISER

## CONSENT

I. CANNOT BE INFERRED FROM KNOWLEDGE WHEN THE CONSENT SHOULD BE IN WRITING.

II. OF GIRL IMMATERIAL WHEN UNDER AGE.

I. CANNOT BE INFERRED FROM KNOWLEDGE WHERE THE CONSENT SHOULD BE IN WRITING.

161. The statutory requirement applicable to insurance in mutual insurance Companies that the consent of the directors to a double insurance must be signified by an endorsement on the policy or other acknowledgment in writing is not satisfied by a mere knowledge by the insurers of other insurance. *Dustin & Hochelaga Mutual Fire Insurance Company*, 4 L. N. 295, S. C. R. 1881.

II. OF GIRL IMMATERIAL WHEN UNDER AGE.

162. Prisoner was indicted under 32-33 Vic., Cap. 20, Sec. 53, for an attempt to commit rape on a child between 10 and 12 years of age. On the part of the defence it was attempted to prove that the girl had had connection with other young persons, and that she had consented to the alleged acts of the prisoner. *Held* that the consent of the child was immaterial and that therefore evidence of such consent would be rejected. *Regina & Paquet*, 9 Q. L. R. 351, Q. B., 1883.

CONSERVATORY ATTACHMENT—  
*See* ATTACHMENT.

## CONSIDERATION.

I. FOR BILL OR NOTES, *see* BILLS, &c.

CONSIGNEE—*See* AFFREIGHTMENT, CARRIERS.

CONSIGNOR—*See* AFFREIGHTMENT, CARRIERS.

## CONSORTS.

I. LIABILITY OF, *see* MARRIAGE.

CONSTITUTION OF CANADA—*See* LEGISLATIVE AUTHORITY.

## GONTAGIOUS DISEASES.

I. ACT RESPECTING. *See*

C. 48-49 Vict., Cap. 70.

## CONTEMPT OF COURT.

I. BY NEWSPAPERS.

II. SERVICE OF MOTION FOR.

III. WHAT IS.

I. BY NEWSPAPERS.

163. During the trial of a contested election petition a rule issued against a newspaper called the *Nouvelliste*, for criticisms reflecting on the conduct of the Judge during the trial of the case. *Held* discharging the rule but condemning the proprietor to pay costs, that the Press has a right to criticize the legality of a decision by the Court, but if it departs from the truth, it would be liable for contempt. *Dussault & Belleau*, 10 Q. L. R., 247, S. C. R. 1884.

II. SERVICE OF MOTION FOR.

164. Where a motion against witnesses for contempt was served on the 7th and returned on the 8th, *held* that there should have been a clear day's notice. *Fair & Cassels*, 4 L. N. 102, S. C. R. 1881.

## III. WHAT IS.

165. A bailiff who proceeds to sell the goods of defendant notwithstanding the fact that oppositions have been filed, and that the prothonotary has made an order to suspend proceedings is guilty of contempt of Court. *Leroux & Deslauriers*, 4 L. N. 173, S. C. 1881.

166. A Defendant who under pretence of desiring to make a settlement, induces a bailiff charged with a writ of execution against him to refrain from making a seizure, and accompany him to the plaintiff for that purpose and in the interval removes a portion of his goods is in contempt of Court and will be ordered to be imprisoned until the whole amount is paid. *Ross & O'Leary*, 6 L. N. 173, S. C. 1883.

## CONTESTATION.

I. OF ATTACHMENT. See ATTACHMENT.

II. OF REPORT OF DISTRIBUTION. See DISTRIBUTION.

## CONTINUANCE.

I. OF ACTION, see PROCEDURE.

## CONTRACTS.

I. ACCEPTANCE OF.

II. BREACH OF.

III. IMMORAL.

IV. IMPLIED.

V. INDUCED BY FRAUD.

VI. IN FRAUD OF CREDITORS.

VII. INJUNCTION GRANTED FOR BREACH OF.

VIII. INTERPRETATION OF.

IX. MISREPRESENTATION.

X. PERFORMANCE OF.

XI. PRIVITY OF.

XII. PROOF OF FRAUD IN.

XIII. RIGHTS OF PARTIES TO.

I. ACCEPTANCE OF.

167. The plaintiff, being indebted to a Bank, wrote to the manager, proposing a compromise. The Bank stated that they had agreed to accept the proposal "with some slight modifications." A notarial deed was subsequently executed containing considerable modifications of the original proposal. Held that the terms of the deed must prevail, bad faith not being proved. *Macdonald & Merchants Bank of Canada*, 5 L. N. 127, S. C. 1882.

BREACH OF.

168. Action of damages against the lessee of the Q. O. & O. R. R. for breach of contract. The defendant agreed to run the railroad

trains between Hochelaga & Calumet, in connection with a steamer run by plaintiff between Ottawa and Calumet. The chief complaint was that defendant had failed to provide a proper wharf and shed at Calumet or to deepen the channel so as to allow his steamer to approach the landing place; that on or about the 18th June he had suddenly changed the hours of departure and arrival of his trains so as to break the connection with plaintiff to his great damage, and he had also broken his agreement as to an excursion train on the Queen's birthday in 1877. Evidence that defendant changed the hours of his trains as complained of without the consent of plaintiff, and in a manner which was not justified by the contract. Damages to the extent of \$105 allowed. *Belcourt & Macdonald*, 4 L. N. 226, S. C. 1881.

169. The plaintiff complained of the non-delivery of a *manteau*. It was alleged that in September, 1880, this *manteau* was delivered to defendants, to be finished on or before the 24th of November; and that there was also a muff to be delivered for \$17. The sum of \$89 was to be payable by plaintiff on delivery. The sum of \$100 is claimed for inconvenience and damages owing to non-delivery, and the conclusions are that defendants be held to deliver, and in default to pay \$150 for value of the *manteau*, and \$100 damages. Held, that the contract to deliver on the 24th was not proved, and there was no ground for damages. Action dismissed. *Beauvais & Lanthier*, 5 L. N. 194, S. C., 1882.

170. An action for damages for non-execution of the following contract:—"Montreal, October 26th, 1880. I agree to deliver 50 tons first-class merchantable hay, at \$12 per ton, to Mr. Charles Larin, in his yard, delivered as required, till the 1st of May, 1881." The plaintiff declared upon this that the defendant was often required to deliver but he never got more than 23 and one-third tons which he paid for; and that on the 23rd May he protested, and required delivery of rest. That at the stipulated time of delivery 1st May 1881 hay was worth \$16 a ton, so that he lost the chance of making \$3 a ton, and he sued for that difference on the 26 tons not delivered, making with the cost of his protest, \$84. *Per curiam*.—It appears to me that the defendant here undertaking to deliver when required within a certain time, and at a certain price, must be held to have contemplated being able to buy below that price (so as to make a profit) up to that time and no longer.—Therefore the demand made by the plaintiff on the 23rd was too late. Besides this in order to prove his damages the plaintiff was bound to show the increased price of hay at the time of the breach which was on the 1st May and he only shows the price on the 23rd May. Action dismissed. *Larin & Kerr*, 5 L. N. 163, S. C., & 218 S. C. R., 1882.

171. *Jugé*, que l'acheteur qui poursuit le vendeur pour lui faire passer titre, et qui conclut à ce que, à son refus, le jugement vaille

titre, doit déposer, avec son action, la partie de prix qu'il dit être payable à la passation de l'acte de vente; mais qu'il n'est pas obligé à ce dépôt, s'il limite sa demande à l'exécution d'un titre ou à des dommages. *Marcoux & Nolan*, 9 Q. L. R. 263, S. C. R. 1883.

172. The Plaintiffs in Montreal were bound by a contract to pay for the goods supplied by Defendants in Scotland upon receipt of invoice and bill of lading. They failed to pay for one lot until 15 days after receipt of bill of lading. *Held* that the defendants were justified in cancelling the contract. *Russell & Maxwell*, 6 L. N. 91, S. C. 1883.

173. Where S. transferred to H. his interest under a contract in consideration of the delivery to him of certain railway bonds, and S. afterwards repudiated this transfer and himself collected the claim so transferred, but still retained the bonds. *Held*, reforming the judgment of the Court below (1) that the condemnation in default of returning the bonds should be to pay the actual value thereof as established by the evidence, and not the par or nominal value. *Senécal & Hutton*, M. L. R. 1, Q. B. 112, 1884.

### III. IMMORAL.

174. A sale of goods for future delivery admittedly made without any intention on the part of the seller to deliver, or on the part of the purchaser to receive delivery of, and on the understanding that the parties should settle with each other at the period fixed for delivery by the one party paying to the other the difference between the price of sale and that which might prevail at the period fixed for delivery, is a mere gambling transaction and therefore illegal null and void. *Shaw & Carter*, 26 L. C. J. 151, S. C., 1876.

175. Where a person had transactions with a stock broker for the purchase and sale of stocks on his account, and it was perfectly understood between the parties that the operations were fictitious, and that there would be no delivery of the stocks, but merely a settlement of the differences of prices, *Held*, that this was a gambling transaction, and that the consideration of a cheque given to the broker in the course of such transactions was illegal, and an action would not lie to recover the amount thereof. (2) *Fenwick & Ansell*, 5 L. N. 290, S. C., 1882.

### IV. IMPLIED.

176. The plaintiff had long been the defendant's notary, and had charged and been paid for his professional services, and specially for deeds similar to those for which he sued, according to the value of the work done a much less sum than the tariff rate would have allowed. A difference having arisen between the parties, the plaintiff

(1) 6 L. N., 220.

(2) And see *Macdougall & Demers*, GAMBLING TRANSACTIONS.

demanded payment, and, being refused, brought suit for the value of professional services rendered previous to the quarrel, at the rate allowed by the tariff and which, in one instance, made the charge over \$80 instead of \$4, which he had demanded and been paid previously for a deed similar, though somewhat more complicated, and for a larger amount. The defendant pleaded an implied contract, based upon the previous dealings, to charge, not according to the tariff, but for the real value of the services rendered as indicated by previous charges and tendered the amount. *Held* that the charges previously made constituted a tacit undertaking not to demand the tariff rates for other deeds of the same description without previous notice of such intention. *Andrews & Quebec & Lake St. John Railway*, 9 Q. L. R. 53, S. C., 1882.

### V. INDUCED BY FRAUD.

177. Where shares were sold, purporting to be the shares of an incorporated company, when, in fact, no such corporation was in existence, the error into which the purchaser was led was held sufficient to annul the contract. *Chrétien & Crowley*, 5 L. N. 268, & 2 Q. B. R., 385, Q. B., 1882.

178. The defendant mortgaged certain property to the plaintiff, the amount of which was to be paid in butter tubs in monthly payments. Shortly afterwards defendant sold the property to one J. B. F. with *faculté de réméré*, but making no mention of plaintiff's mortgage. F. discovering this, with the aid of defendant and his son L., endeavored to compel plaintiff to give him priority upon the load—threatening to prosecute plaintiff criminally for having forged the name of defendant's son L. to a promissory note. Yielding to this threat, which was made under circumstances and by the aid of accessories calculated to more effectually intimidate him the plaintiff signed a discharge and accepted a new obligation from defendant by which the monthly payments of butter tubs was to continue until the claim was extinguished. *Held*, that an obligation extorted by violence is null, and payments made to and received by the party seeking for the nullity of an obligation by suit on such grounds is not an acquiescence. *Dugrenier v. Dugrenier*, 6 L. N. 234, S. C., 1883.

### VI. IN FRAUD OF CREDITORS.

179. A donation made by a father to his daughter at a time when he was perfectly solvent, but with a view to going into business, and securing him against any debts he might contract, was set aside at the suit of the assignee of the donor after his insolvency, although the creditors represented by him were all subsequent to the donation (2). *Murphy & Stewart*, 12 R. L. 501, Q. B. 1868.

(1) But per contra see authorities cited at the bottom of the above report.

180. Seventeen days after the date of the marriage contract, defendant made an assignment of his estate under the Insolvent Act 1875. There was no evidence of bad faith on the part of the wife, the opposant. *Held* that under Art 1034 C. C. (1) the donation must be presumed to be fraudulent as regards the defendant. *Held* that although the wife was in good faith, a donation under such circumstances is a gratuitous contract as much in favor of the donor as of the donee and must be set aside. Opposition dismissed. *Behan & Erikson*, 7 Q. L. R. 295, S. C. 1881.

181. Where an insolvent transferred all his assets, &c. to others, on condition of their paying the debts due by his estate, and of a bonus in the shape of a reduction of a claim of one of his debtors. *Held* that such contract was in fraud of his other creditors, and could be set aside on *garnishee seizure* without special action to that effect. *Gillies vs. Kirwin*, 12 R. L. 1, S. C. 1881.

182. The right to set aside a contract in virtue of Art. 1032 C. C. (2) is without effect as regards third parties, in good faith. *Normandin & Normandin*, 11 R. L. 59, S. C. 1882.

183. A donation made by an insolvent to his son on pretence of paying him a salary for the time he worked with him after he attained his majority will be held to be gratuitous and made in fraud of his creditors. *Leblanc & Gillin*, 11 R. L. 341, S. C. 1882.

184. And in an action to set aside such donation, the nature of the claim and the notorious insolvency of the donor will be taken into account in establishing a fraud. *Id.*

185. The plaintiff having taken *saisie-arreêts* against the sons of the defendant, they answered that they had nothing. Nothing was done on these declarations for nearly two years, when the plaintiff by motion, unopposed, obtained leave to contest on the ground of fraud and collusion between father and sons. At the trial the sons admitted having known their father was insolvent, and having taken some furniture from him on account of claims, they had against him but urged the lapse of time and the limitation laid down by Art. 1040 C. C. (3). *Held*, in Review, reversing the judgment of the Court below, that there was no fraud, and if there was, the plaintiff had

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(1) A gratuitous contract is deemed to be made with intent to defraud if the debtor be insolvent at the time of making it. 1034 C. C.

(2) Creditors may in their own name impeach the acts of their debtors in fraud of their rights, according to the rules provided in this section. 1032 C. C.

(3) No contract or payment can be avoided by reason of anything contained in this section at the suit of any individual creditor, unless such suit is brought within one year from the time of his obtaining a knowledge thereof. If the suit be by assignees or other representatives of the creditors collectively, it must be brought within a year from the time of their appointment. 1040 C. C.

lost his right to contest by lapse of time. *Richard & Michaud*, 8 Q. L. R. 244, S. C. R. 1882.

186. In May 1876, plaintiff sold to defendant certain effects including a Brussels carpet costing \$93, and an oil cloth \$26. On the 9th November of same year an action was instituted by the plaintiff against the defendant for \$114, being balance due therein and judgment rendered for the amount 12th December following. To a seizure of defendant's goods and chattels, including the carpet and oil cloth, the wife of defendant filed opposition based on her marriage contract by which the goods and effects in question were conveyed to her as a donation thereunder. The marriage contract was entered into the 18th of November 1876, or just nine days after the date of the action. Plaintiff contested the opposition on the ground that at the date of the marriage contract the defendant was utterly insolvent to the knowledge of the opposant and the donation was made for the purpose of defrauding the creditors of the defendant, more particularly the plaintiff, from whom the defendant had purchased the said carpet and oil cloth forming part of the goods and chattels so given by the defendant to his wife, and now seized at the suit of the plaintiff. And in another case of similar character, it appeared that the defendant, by contract of marriage transferred all his property to his wife nine days after action was brought, but there was no assignment in insolvency, and no allegation of insolvency in the pleading; the contract of marriage was nevertheless held to be made in fraud of plaintiffs' rights, and the opposition of the wife based thereon was dismissed (1). *Holliday & Considine*, S. C. 1884.

#### VII. INJUNCTION GRANTED FOR BREACH OF.

187. Action for an injunction, and an account and also in damages. The complaint set out an agreement of date 22nd February, 1877, by which the plaintiff undertook to furnish to defendants his dry brilliant body green, and also consented that his trade mark should be used by defendants for five years on the labels for said green, after it was ground by the Company in pure refined linseed oil. Plaintiff complained that the Company failed to furnish him with monthly accounts; that the Company greatly adulterated the dry green furnished by Plaintiff, with divers inferior materials, which took away the brilliancy of the green and impaired its coloring power, and more especially had used in such adulteration sulphate of Barytes and other inferior materials using said trade mark of plaintiff &c. Conclusion that the Company be enjoined from using said trade mark upon any of said green so manufactured by the Company, that they be con-

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(1) Loranger J. unreported.

demned to furnish an account and to pay over &c. On the evidence injunction granted as prayed for and general damages. *Martin & Dominion Oil Cloth Company*, 4 L. N. 237, S. C. 1881.

#### VIII. INTERPRETATION OF.

188. Judgment in appeal in *Beaudry & Les Curés, &c.* (II Dig., 186-219) given at length, 25 L. C. J. 285, Q. B., 1880.

189. The Respondants sold to the Appellant from 300 to 350 tons of coal subject to the condition that if at any time the operations or business of the Company at the mines or on its Railways or Canals were interrupted by floods, &c... or by strikes among the miners &c. the obligations of the Company to deliver coal under its contract or agreement might be cancelled, at the option of the Company, and the Company should not be liable for damages by reason of such non-delivery. *Held* that an interruption in the operations of the Company caused by a strike among the miners which lasted from the 25th of July to the 15th of October, although begun at the date of the contract, was such an interruption as justified the Company in cancelling the contract, and although the Company might have procured coal elsewhere to fulfil its contracts, it was not obliged to do so, and no demand or judgment was required to cancel the contract, which was cancelled by a mere notice given by the Company. *Mason & Delaware & Lackawanna & Western R'y Co.*, 1 Q. B. R. 204, Q. B., 1881.

190. Action under a lease for five years from 1st May 1878. The rent had been paid up to the 1st of May 1881, before the action began, and the defendant contended that his lease terminated at the last mentioned date under an assignment which he had made as an insolvent on the 31st December, 1880. His plea invoked this assignment and a clause of the lease in the following words: "In case of insolvency of said lessee or his making any assignment of his estate, this lease shall *ipso facto* become null and void after the expiration of the year then current during which such assignment is made for the remainder of the term thereof, without notice to the assignee or to any other person or persons whatever." Plaintiffs answered the plea by alleging that the lease was made when the Insolvent Act of 1875 and its amendments were in force, and that the clause in question had only been inserted in view of an insolvency and assignment under this Act. Answer of plaintiffs held to be well founded, and that the clauses in question did not apply to a voluntary assignment after the repeal of the Act. *Beaudry & Bond*, 4 L. N. 227, S. C., 1881.

191. Plaintiff having seized the moveables of defendant under a judgment agreed to release the things seized on receipt of notes endorsed by a person mentioned in the agreement at twelve, eighteen and twenty four

months. The notes were furnished and the seizure withdrawn, but before the maturity of the notes plaintiff seized money belonging to defendant in the hands of the *tiers saisi*. Defendant pleaded the agreement which was in writing. *Held* to suspend execution of the judgment till the notes fell due, notwithstanding verbal evidence that it was only to apply to the moveables then under seizure. *Mackay & Fletcher*, 4 L. N., 374, S. C. 1884.

192. The petitioner entered into an agreement with the insolvents by which she sold them the book debts of the journal *L'Eclair* and leased them the printing material or plant of that journal and promised to sell it to them at any time they might wish to buy it during the four years of the lease. If they bought it they were to pay for it as if it were still leased, the amounts paid to go in reduction of the purchase money. If they failed to carry out any of their undertaking the agreement was to be void. *Held*, that such a promise of sale unaccepted did not transfer the property. *Levy & Bouchard*, 7 Q. L. R. 224, S. C. 1881.

193. The respondents were a firm of brokers in London, England, and the appellants were the general contractors of the Quebec Central Railway. In 1877, E. C. B. one of the appellants, being in England endeavoring to purchase rails and fastenings for the Railway, applied to respondent to introduce him to a firm who would undertake to sell and deliver 5,000 tons of steel rails, etc., on terms settled by B. and he gave them a letter agreeing to pay 2½ per cent commission on the invoice amount in consideration of their introducing to him within two days a firm whose responsibility and standing were satisfactory to him. The commission was payable at B's option, either in cash or in the first mortgage bonds of the Quebec Central Railway at 50 per cent of their nominal value. The respondents, under this agreement, introduced B. to the Railway Steel & Plant Company, of Manchester, from which he purchased to the extent of 4,000 tons. The action was brought to recover a balance of commission. *Held*, that where a commission was payable in cash or bonds at the option of the debtor, part payment in cash was making an option, and gave the creditor the right to demand the balance in cash. *Bowen & Gordon*, 5 L. N. 300, Q. B. 1882.

194. Plaintiff in 1879 sold defendant 50 acres of land for \$2,000 payable in twenty annual instalments of \$100 each, the whole at four per cent per annum. The deed contained a clause to the effect that plaintiff was to allow defendants eight per cent on all payments made in advance from the date of payment until the time they should have become due. Defendants paid two instalments of \$100, each when they became due then tendered \$500, in full of the balance, (\$1800) claiming a discount of \$1300 under the clause in question. Plaintiff brought

action for \$248, one instalment of principal and two years interest. *Held*, rejecting defendant's tender, that the intention of the parties must be determined by interpretation rather than by adherence to the literal meaning of the words of the contract. *Eaton & Unwin*, 7 L. N. 7, S. C. 1883.

#### IX. MISREPRESENTATION.

195. Where the plaintiff sold to the defendants the right to manufacture and sell a certain churn for which plaintiff had a patent, and afterwards in an action for the price of such sale the defendants pleaded that plaintiff falsely pretended that his churn was a new and useful invention, and that the principle was new, whereas it was not new; that the plaintiff was to protect the defendants in their sale of the churn whereas he had allowed others to sell them. *Held*, that as defendants subsequently to the sale to them had written that the churn was a success they were stopped from proving misrepresentation. *Campbell & James*, 4 L. N. 210, S. C., 1881.

#### X. PERFORMANCE OF.

196. Action for specific performance of a contract of sale of iron pipe through a broker made on the 2nd February, 1880, by plaintiff to defendants. A portion of the iron was in store and deliverable from there. The balance was to arrive *shortly* and to be delivered by the G. T. R. The portion in store was delivered and paid for and about the 29th March about 30,000 feet of the remaining lot were delivered and paid for, and on the 11th May about 11,000 which were on the steamer *Polynesian* were tendered and refused. The balance of 10,000 came by the steamer *Lake Champlain*, but there was no evidence of the tender of it. Plea that the lot to arrive *shortly* was to be delivered by the G. T. R. before the opening of navigation, and the 12th May was too late. Plaintiff on the contrary pretended that so long as they were not required to deliver they were in time to deliver. Between the date of sale and the delivery of the last lot there was a fall in price of some 45 per cent. *Per curiam*.—We have the fact that the delivery of a portion of the part in dispute was not tendered until the 12th May; more than three months after the sale, and no tender appears of the remainder. I do not consider an offer after three months, of goods, to arrive *shortly*, an offer made within a reasonable time. *Thompson & Hurrie*, 4 L. N. 139, S. C., 1881.

197. The plaintiff sued for a sum of \$50 alleged to be due for the insertion and circulation of the defendant's advertisement in their publication called the "Farmer's Almanac," in virtue of a contract in the following terms:—

"To the Publishers of the Farmer's Almanac.

"Please insert our advertisement to

"occupy a space of one half page (op. April) top page half, for which we promise to pay "fifty cents for each thousand circulated."

"(Signed,) H. R. Ives & Co."

The plaintiffs claimed to have circulated 100,000 copies of the almanac and to be entitled to \$50. Plea that the almanacs had not been circulated under the terms of the contract, or according to the custom of trade. Proof by receipts of customers for quantities of the almanac, ranging from 250 to 5000, and that before the signing of the contract, plaintiff had explained to defendant the company's method of doing business, which was to sell the almanac in quantities upon the orders of their customers, with the advertisement of that particular customer upon the outside cover. Judgment for plaintiffs. *Montreal Printing Co. & Ives*, 6 L. N. 328, C. C., 1883.

#### XI. PRIVACY OF.

198. W., the defendant and his brother carried on business as millers and flour merchants at Stouffville and Meadowvale, in the Province of Ontario; and the defendant W. and one B. in the same business at Cataract, in the same Province, under the name of "W. & B." One L. of Arthabaska, in the Province of Quebec, proposed to W. Bros. of Meadowvale to act as agent for them in this Province and W. Bros. answered: Qu'ils ne voulaient pas l'employer à commission, mais en lui indiquant le prix, les charges et les conditions de la fleur *Plimsoll* qu'ils fabriquaient, il ajoutaient que tout ce qu'il pourrait réaliser en outre serait pour lui, et lui enjoignaient spécialement de ne faire aucune vente sans leur avoir préalablement demandé leur prix<sup>s</sup> autrement ils ne promettaient pas de remplir les ordres qu'il devait faire signer à l'acheteur<sup>r</sup>. Le 15 du même mois, Larivière adressa auxdits W. Brothers, à Meadowvale, l'ordre suivant: "Arthabaska Station, 15th July 1882. "I bought this day of W. Bros. merchant-millers, Ontario, 250 (two hundred and fifty) bags of flour branded "Strong Baker" at \$6.25 (six twenty-five). Bags returned. Delivered at Arthabaska Station, to be shipped immediately to order of Bank Union by draft of 30 days after receipt at Three Rivers, P. Q., Paul Tourigny." W. Bros., sur réception de l'ordre le transmièrent à W. & B. à Cataract, pour l'exécuter si le prix convenait, en leur faisant des suggestions, mais leur laissant en même temps une entière discrétion; et ils informèrent Larivière qu'ils ne faisaient pas l'espèce de farine demandée, ne fabriquant que la *Plimsoll*, mais qu'ils avaient transmis l'ordre à W. & B., à Cataract, qui lui télégraphiaient, le lendemain, s'ils avaient la fleur demandée. Le 18, W. & B. informaient Larivière par carte poste, qu'ils avaient expédié au demandeur la farine demandée, à raison de \$6.35, par traite de 30 jours suivant son ordre. W. & B., après l'expédition, endossèrent la

lettre de voiture en faveur de la Bank of Commerce, à Orangeville, et la lui remirent avec la traite à 30 jours sur Tourigny, payable à la Banque Union, à Trois Rivières, que la Bank of Commerce leur escompta. Cette dernière banque transmitt l'un et l'autre à la Banque Union, à Trois-Rivières, avec instructions de ne remettre la lettre de voiture à Tourigny que sur paiement de la traite; puis après communication par télégraphe, elle ajouta la condition du paiement, l'alternation d'une sûreté que la lettre de change serait payée à échéance.

Plaintiff refused the terms and sued W. & B. for breach of contract. *Held* there was no privity between them and action dismissed. *Tourigny & Wheeler*, 9 Q. L. R. 198, S. C. R. 1883.

### XII. PROOF OF FRAUD IN.

199 In an action to set aside an inventory and partage on the ground of fraud. *Held* that the fact that a minor was represented at an inventory and partage only by her tutor, her father, who had a conflicting interest, was not a ground for setting aside the partage at the instance of a third party, when the minor who has since become of age makes no complaint in respect thereof. *Charlebois & Charlebois*, 26 L. C. J. 364, Q. B. 1882.

200. And where such action is brought by a member of the family who formally consented thereto, the burden of proof is on the plaintiff to show that his or her consent was improperly obtained and parole testimony is admissible on the part of the defendant to repel verbal proof of fraud adduced by the plaintiff; and in the case in question there was no fraud proved. *Ib.*

### XIII. RIGHTS OF PARTIES TO.

201. Where there was a covenant in a contract for the construction of railway works between the chief contractor, and a subcontractor that the quantities and qualities of the work done by the subcontractor and the amount of the payments to be made by the chief contractor to the subcontractor should be ascertained and determined before an engineer to be named by the contractor in chief. *Held* to be a valid covenant and that under the pleadings in the case the defendant was entitled to the benefit of the said covenant. *Savard & McGreevy*, 7 Q. L. R. 97, S. C., 1881

202. But that the defendant could not have the advantage of the said covenant as regards works done by the subcontractor, not alleged by the parties to have been done under the contract, although alleged and proved to have been done in connection with and whilst the works contracted for were in progress. *Ibid.*

### CONTRACTORS.

#### I. LIABILITY OF.

*For accident caused by building material left unguarded in the street.*

#### II. RIGHTS OF WORKMEN EMPLOYED BY.

#### I. LIABILITY OF.

203. *For accident caused by building material left unguarded in the street.*—Action of damages for an accident caused by an alleged obstruction in the street by which the plaintiff was thrown out of a cart and injured. The city called in the contractors as *garants*, and these pleaded negligence on the part of the man driving the cart. The contractors has a quantity of material in the street by permission of the city, with a stipulation to have a light there. The evidence as to contributory negligence non the part of the driver was contradictory, but it was proved that there a pile of stones and timber in the streets, that the accident was caused thereby, and that there was no light placed there by the contractors and the evening was dark. The material might have been enclosed with a fence and a light might have been placed there. *Held* that the City and contractors should answer in damages. Damages assessed at \$250, for which judgment against the City, and *en garantie* against the contractors. *Diotte & City of Montreal*, 4 L. N. 243, S. C., 1881.

204. The defendant *en garantie* was digging a sewer in a public street, and the plaintiff drove into it with a result of more or less injury to himself, his horse and his carriage. He sued the corporation as primarily liable, and they called in defendant *en garantie*, who contested the case with the plaintiff. The amount of damages asked by the action was \$400, and the defendant offered with his plea, and also before the action, \$25 damages and costs. He also pleaded that the accident was due entirely to the plaintiff's own negligence. Evidence at some length was heard, and the judgment was for \$100 damages and costs of that class. Judgment confirmed in review. *Charpentier & City of Montreal*. S. C. R. 1882.

#### II. RIGHTS OF WORKMEN EMPLOYED BY.

205. The plaintiff, a workman was engaged by contractors for the construction of a railway. The railway Company acted as bankers for the contractors, and paid the wages of the workmen, cost of transport to the place where they were to work, &c. *Held* that the Company were the real principals and they had given plaintiff reasonable cause for believing that the contractors were their agents, and therefore the Company were liable for a breach of the contract. *Lapointe & the Canadian Pacific Railway Company*. 7. L. N. 29 C. C. 1883.

## CONTRAINTE PAR CORPS.

## I. LIABILITY TO.

206. Cases of *McCaffrey & Claxton* (II. Dig. 365-20) and *McCaffrey Exp.* (II. Dig. 366-22,) reported in *Extensio*. 25 L. C. J. 188 and 191, Q. B. 1880.

207. On a rule for *contrainte par corps* against a *fol adjudicataire* to compel payment of the loss occasioned by a resale of the property.—*Held* that neither personal service of the rule where the motion had been personally served, nor a description of the property were necessary. *Delisle & Lanche*, 26 L. C. J. 162, S. C. R., 1881.

208. A bailiff who proceeds with a sale in execution notwithstanding an opposition and an order to suspend served upon him will be declared in contempt of Court and be imprisoned. *Leroux & Deslauriers*, 12 R. L. 298, S. C., 1881.

209. Demand for *contrainte par corps* against judicial sureties on the ground that there had been no *commandement de payer* and that the four months delay had not expired. *Held* that there had been *commandement* to pay by the seizure and sale of moveables under execution, while the four months delay only applied to tutors and curators in default. *Dupras & Sauvé*, 4 L. N. 299, S. C., 1881.

210. Imprisonment of a defendant condemned to *contrainte par corps* for default of paying the amount of a judgment should take place in the district where the defendant resides, and not in the district where the judgment was rendered. *Lacoste & Castagne*, 11 R. L. 337, S. C., 1882.

211. *Contrainte par corps* does not lie against a *tiers-saisi* who has been condemned on contestation to return a piano which he purchased from defendant in fraud of the creditors, or pay the value and neglects to do so. *Racine & Kay*, 2 Q. B. R. 346, Q. B., 1882.

212. There is no right of imprisonment against the holder of an immoveable who has been condemned to give up possession of it, and render account because he has not produced his account within the delay fixed by the Court. *Crowley & Chrétien*, 11 R. L. 375, S. C., 1882.

213. Where damages had been rendered for *injuries personnelles*.—*Held* following *Barthe & Dagg*, (II. Dig., 366-21) that *contrainte par corps* might be obtained on application subsequent to judgment, though not asked for by the declaration and that for a sum less than 200 livres. *Ouellette & Vallières*, 26 L. C. J. 391, C. C., 1882.

214. Where a defendant and a guardian were ordered by a judgment in revendication to deliver to the plaintiff the goods seized in the cause and refused to do so, and a rule issued against them, to which the defendant pleaded that the rule had not been preceded by a motion, nor had he had been called upon to show cause why the rule should not issue

nor was he in any case liable to *contrainte par corps* in the premises, and the *gardien* answered to the same effect. *Held* discharging the rule as to the defendant without costs and confirming it against the guardian. *Watso & Labelle*. 26 L. C. J. 121. C. C. 1882.

215. *Jugé*.—Que la condamnation par corps pour torts personnels est laissée à l'arbitrage du tribunal, qu'elle ne peut être prononcée que lorsque les dommages accordés se montent à \$16.66 ; ou plus, et 4 mois après la signification au défendeur du jugement qui les accorde, et que son exécution ne peut être ordonnée que 15 jours après le jugement qui la prononce. *Nysted & Darbyson*. 9. Q. L. R. 322, S. C., 1883.

216. Le demandeur ayant obtenu jugement contre la défenderesse et pris exécution, elle s'est opposée à la saisie, en fermant les portes de sa maison et refusant de les ouvrir. Le demandeur a, alors, obtenu contre elle une *contrainte par corps* qu'il a fait exécuter, le 12 Septembre dernier, par l'appréhension de la défenderesse et sa livraison au gardien de la prison de ce district, où elle est détenue depuis. Elle a présenté deux requêtes : une pour les aliments, auxquels l'article 750 du Code de Procédure donne droit au débiteur incarcéré qui ne possède pas de biens au montant de \$50, et l'autre pour son élargissement, fondée sur ce qu'elle avait fait cession et abandon de ses biens. (C. P. 793.) *Jugé*. Que la *contrainte par corps* n'est qu'un mode d'exécution des jugements ; Que le rebel à la justice, qui n'est que contraint par corps jusqu'au paiement, a droit à des aliments ; Que la cession de biens faite par le contraint par corps ne lui permet pas d'être libéré, avant l'expiration des 4 mois accordés au créancier pour la contester. *Côté & Vermette*, 9 Q. L. R. 340. S. C., 1883.

## CONTRIBUTOIRES.

I. WHO ARE *See* BANKS LIQUIDATION OF.

## CONTRIBUTORY NEGLIGENCE.

## I. DAMAGES IN CASES OF.

217. Action against a farrier for the loss of a valuable horse which was injured while being shod in the premises of the defendant. The horse was in charge of plaintiff's groom and being restive and troublesome, the groom struck it with a whip which he had in his hand. The horse thereupon backed up suddenly and one of his hind feet went down an opening between the end of the flooring and the wall, which was just large enough to allow it to press through but closed on it, and would not allow it to come back. In the struggle which the horse made to free itself



it was injured so that it had to be shot. *Held* that while the farrier was bound to have his premises in proper condition, the groom had in this case contributed to the accident by striking the horse so that the plaintiff could not recover. Action dismissed, each party paying his own costs. *Allan & Mullin*, 4 L. N. 387, S. C., 1881.

218. In an action by an employee against his employer for injury suffered in the course of his employment. *Held* that when the employee has done only what most other persons would do, he is not in fault, and is not guilty of contributory negligence. *Cossette & Leduc*, 6 L. N. 181, S. C. R., 1883.

219. Where a collision occurred between two vehicles, and both drivers were in fault, but it appeared that the accident nevertheless might have been averted, by ordinary care on the part of one who did not stop when requested, the latter was held liable in mitigated damages. *Therien & Morrier*, 6 L. N. 110, S. C., 1883.

## CONVEYANCE—See SALE, TRANSFER. &c.

## CONVICTION.

I. FOR ASSAULT AND BATTERY A BAR TO FURTHER PROCEEDINGS.

II. FOR SELLING LIQUOR WITHOUT LICENSE.

III. ILLEGAL CONDEMNATION.

IV. UNDER 32 AND 33 VIC. CAP. 32. SEC. 17. DOES NOT JUSTIFY BOTH FINE AND IMPRISONMENT WITH HARD LABOUR.

I. FOR ASSAULT AND BATTERY A BAR TO FURTHER PROCEEDINGS.

220. Action of damages for an assault and battery committed by the defendant upon the plaintiff, at Sherbrooke. Plea *inter alia* that there had been complaint made against him before a justice of the peace for the offence, and he had been convicted and fined \$15 and costs, and had complied with the terms of the conviction. *Held* following. *Marchessault & Gregoire*. (I. Dig, 335, 1053.) and overruling the judgment of first instance, that in cases of common assault defendant was released from all further proceedings for the assault. *Pinjault & Symmes*. 7. L. N. 3. S. C. R. 1883.

II. FOR SELLING LIQUOR WITHOUT LICENSE.

221. The petitioner was convicted on a complaint which charged, by nine different counts, in each of which the name of the liquor was changed that he sold liquor without licence, in contravention of the License Act of Quebec. *Held* on a petition for prohibition that the

nine different counts only constituted one charge, and though each concluded with a demand that he be condemned to a penalty of \$75, and the magistrate's jurisdiction was confined to a \$100, there was no excess of jurisdiction in the conviction. *Côté & Chauveau*, 7 Q. L. R., 258 S. C., 1880 (1).

## III. ILLEGAL CONDEMNATION.

222. A conviction for assault was set aside on *certiorari*, on the ground that the defendant had been condemned to pay the doctors fee for sewing up the lip of the complainant which was illegal. *Gauthier, exp.*, 4 L. N. 132, S. C. 1881.

IV. UNDER 32 & 33 VICT. C. 32, s. 17 DOES NOT JUSTIFY BOTH FINE AND IMPRISONMENT WITH HARD LABOR.

223. On a petition for *habeas corpus*, it appeared that the petitioner had been condemned by the Recorder under the provisions of 32 & 33 Vic., cap. 32, s. 17, to a fine of \$100 and to be imprisoned at hard labour for the space of six months. *Per curiam*.—The statutes permit three kinds of punishment: 1. Imprisonment not exceeding six months with or without labour. 2. Fine not exceeding with the costs \$100.

3. Fine and imprisonment not exceeding the said period of time. It is contended for the conviction that the third form of penalty allows fine and imprisonment with hard labour. To arrive at such a conclusion we must ignore not only the common use of a technical term, but the plain meaning of a word. Imprisonment does not itself include hard labour, which is an aggravation of the penalty, just as solitary confinement, bread and water and whipping. Again imprisonment in the language of the common law has never been held to permit of any addition. Fine and imprisonment are the common law punishments for all misdemeanors, and without the authority of a statute no other punishment has ever been added. Conviction quashed in two cases (2). *Lefebvre exp. & Dufresne exp.*, 4 L. N. 253, Q. B. 1881.

## CORD WOOD.

### I. PILING OF.

224. *Per curiam* the defendant is a dealer in firewood, and the plaintiffs the executors of the will of the late A H and the action is to recover a large balance

(1) Confirmed in Appeal.

(2) For the remarks of Monk, J. decided in a contrary sense in *Cherel Exp.*, with the approval of some of the other judges, see 4, L. N. 803, Ed.

(some \$1300 or \$1,400) alleged to be still due as part of the price of a large quantity of firewood sold and delivered to the defendant. The difficulty is as to the fulfilment of the contract alleged by the plaintiffs, they contending that the defendant took delivery on the spot of the whole quantity, and he, on the other hand, setting up that there was a very considerable deficiency, and offering a much less sum as the balance actually due. The wood was in several lots or piles corded on the ground; as to the lot of 280 cords there is no difficulty about it; but as to a lot of 512½ cords at \$4.25 per cord, the defendant wrote on the 23rd of July:—"I will accept your offer 512½ cords maple at \$4.25. I shall measure the wood Tuesday or Wednesday, \* \* \* 56½ of birch and beech at \$3.75, and 26½ cords short maple at \$2.50 per cord." Then on the 28th July he wrote again that he had measured the wood and found the measure short, and suggested a deduction. On the 29th July Mr. H wrote back that he could not submit to the deduction asked for, and enclosed a bill for the whole lot, saying that if the defendant did not take it, he might withdraw the money he had lodged in the bank to the plaintiff's credit. After this, in August, the defendant wrote another letter to Mr. H who was acting for the estate (see defendant's exhibit A), complaining of the measurement as deceptive, and Mr. H went to meet him at St. Hermas and reopened the dealing, which, perhaps, might otherwise have been considered closed, and they went into it again, and H told the defendant he had seen the wood when he bought it, but he (H) was willing under the circumstances to reduce the account which then stood at \$1,370 or so, to \$1,250. The defendant offered \$1,150 to close, but his offer was rejected, and they separated, the defendant saying that he would have the wood corded over again. Here the matter ended. Therefore the question is hardly doubtful whether the defendant then and there took delivery of the wood as it was, or whether he only took delivery, or was willing to take it, subject to re-cording the wood. When the parties met, the defendant pointed that the string pieces had been included in the measure, and the plaintiff offered to allow for them. There was also a sum of \$19, which he had paid to one Lavigne, the owner of the land, before taking away the wood, and the plaintiff also offered to allow for that. The sum then due, according to the plaintiff's account, was \$1,370, as I have already said, and allowing for the string pieces and the \$19 paid to Lavigne, the plaintiff offered to make it \$1,250 which the defendant refused. There would not appear, then, up to this, to have been anything determinate as to the quantity, either with regard to the sale itself, or the delivery. There may have been a contract of sale perfect in itself; but indeterminate as to the quantity of the thing sold (see articles 1,025 and 1,026 C. C.) This is precisely what is in

dispute here. The plaintiff says: There were four lots, one of 280 cords at such a price, one of 512½ at so much, and one of 25, and of 56½ at so much—making altogether 874 cords of wood which I sold and delivered to you. The defendant says no: The 280 cords are all right; but upon the rest there is a deficiency of so much, and you having failed to deliver, I only agreed to the bargain subject to measurement, and all I owe you therefore is so much; and I offer it now with my plea. There is certainly evidence very strong, not only of deficient measurement; but of measurement, if not designedly deficient, made loosely under personal instructions of the plaintiff's agent. I think the defendant on the whole is in good faith, and has made out a strong case. He has proved that the cording had not been done fairly, and that the purchaser could not see what he bought because the defect was inside the pile, and the piles or rows were so close together that you could not get between them to examine. The ends and the tops were well enough, and the outside row were all right to the eye; but when it came to pulling the rows to pieces, it was seen that the cording was deceptive, and consequently, that the quantity stated to be sold was not there, and the defendant never agreed to take it at the quantity contended for by plaintiff. There is no evidence of delivery of the whole, and there is evidence on the contrary, that the defendant only consented to buy the 512½ lot subject to measurement. The plaintiff, when he brought this suit (15th September) had no right to bring it, as he did, for the whole quantity, as if it had been sold and delivered to the full extent. On that same day he got a letter from the defendant, telling him that the measurement would be completed the next day, and to come and settle on the ground at St. Hermas. The answer was the present action, while the quantity was still indeterminate. The judgment will therefore maintain the plea and offer, with costs against plaintiff. One of the items of the defendant's account of reductions is for the cost of measurement. I have allowed this, because the first obligation of the vendor is to deliver, and his default to do so rendered measurement necessary. *Hodge & Graham*, S. C. 1882.

## CORONERS' INQUESTS.

### I. ACT AMENDING.

Section 5 of the Act 43-44 Vict. cap. 10, is amended by adding thereto the following clause:

"Except however, human bodies found upon the beach of, or floating in the river St-Lawrence opposite the parish of Beaumont and the parish of St-Joseph de Lévis. If such bodies be not claimed as provided for by cap. 30 of the act 46 Vict. the coroner shall see to their burial, and shall be reimbursed his necessary and reasonable expenses incurred there-by as for costs forming part of those of his office." Q. 47 Vict. cap. 12, sec 1.

## CORPORATIONS.

## I. ANNUAL MEETING OF.

## II. ECCLESIASTICAL.

## III. INDICTMENT OF.

## IV. LIABILITY OF.

*For debts contracted previous to incorporation.*

## V. NOT AFFECTED BY KNOWLEDGE OF THEIR OFFICERS IN THEIR INDIVIDUAL CAPACITY.

## VI. POWERS OF.

*To acquire real estate.*

*To carry on trade.*

## VII. RIGHTS OF MEMBERS WITH RESPECT TO TRUST FUNDS.

## VIII. SERVICE OF

## I. ANNUAL MEETING OF.

225. The annual meeting of the Railway Company defendant (a company subject to the provisions of the Consolidated Railway Act, 42 Vict.) did not take place on the day appointed therefor in consequence of an injunction suspending the holding of such meeting. This injunction was subsequently dissolved at the instance of a shareholder. *Held*, that service of notice upon the president and secretary that the injunction had been dissolved, together with a copy of the judgment dissolving the injunction, was sufficient to put the company *en demeure* to call the meeting; and a *mandamus* might issue in the name of a shareholder under C. C. P., 1022, to compel the company to call the meeting (1). *Hatton v. M. & P. B. R'y Co.*, 7 L. N., 368 & M. L. R., 1 S. C., 69, 1884.

226. It was the duty of the board of directors, as soon as the injunction was dissolved, to proceed to call the said meeting, in order that the election of directors might be held as provided by sec. 19 of the Consolidated Railway Act (42 Vict., cap. 9). *Ib.*

227. The calling of the annual meeting is not a duty specially appertaining to the office of president, the Railway Act (42 Vict. cap. 9, sec. 19,) making it the duty of "the directors" to cause such meeting to be held. *Ibid.*

228. When the directors omit, neglect, or refuse to perform their duty of calling such meeting, the condemnation under C. C. P., 1025, for failure to comply, will be against the corporation, and not against the directors personally. *Ib.*

## II. ECCLESIASTICAL

229. Where under a judgment against the Lord Bishop of Montreal the plaintiff seized certain shares of Bank and other stock and the seizure was opposed by the Synod of the Diocese, which claimed that the shares belonged to it, and that the Lord Bishop was president thereof. *Held* that as the shares

[1]. In appeal.

## III. INDICTMENT OF.

were in the name of the Lord Bishop of Montreal they must be held to be his property and liable to seizure. *La Compagnie de Dépôt et de Prêt de Canada & Bishop of Montreal*. 12. R. L. 9, S. C., 1881.

Whereas the mode of proceeding to compel corporations aggregate to appear and to plead to bills of indictment, found against them is attended with delay and expense, therefore Her Majesty, by and with the advice and consent of the senate and house of commons of Canada, enacts as follows;

Whenever a bill of indictment for a misdemeanor, shall be found against a corporation aggregate at any Court of Oyer and Terminer, and general gaol delivery, Circuit Court, County Court or other Court having criminal jurisdiction, it shall be the duty of such corporation to appear by their attorney in the Court in which such indictment has been found and to plead or demur thereto, in like manner as in the case of such an indictment found against a natural person. C. 46 Vict., Cap. 34, Sec. 1.

2. No writ of *certiorari* shall be necessary to remove any such indictment into the Court of Queen's Bench or other Supreme or Superior Court of any province in the Dominion with the view of proceeding to compel the defendant to plead thereto, nor shall it be necessary to issue any writ of *distringas*, or other process, to compel the defendant to appear and to plead to such indictment.

3. It shall be lawful for the prosecutor when any such indictment has been found against a corporation aggregate, or for the clerk of the Court when such indictment is founded on a presentment of the grand jury, to cause a notice thereof to be served on the mayor or chief officer of such corporation or upon the clerk or the secretary thereof, stating the nature and purpose of such indictment, and that unless such corporation appears and pleads thereto in two days after the service of such notice, a plea of not guilty will be entered thereto for the defendants by the Court and the trial thereof will be proceeded with in like manner, as if the said corporation had appeared and pleaded thereto.

4. In case the said corporation does not appear in the Court in which the indictment has been found and plead or demur thereto within the time specified in the said notice, it shall be lawful for the judge presiding at such Court, on proof to him by affidavit of the due service of such notice, to order the clerk or proper officer of the Court, to enter a plea of not guilty on behalf of the said corporation, and such plea shall have the same force and effect as if the said corporation had appeared by their attorney and pleaded the same.

5. In either case, whether such corporation appear and plead to the indictment, or whether a plea of not guilty be entered by order of the Court, it shall be lawful for the Court to proceed with the trial of the indictment, in the absence of the defendants, in like manner as if they had appeared at the trial and defended the same, and in case of conviction, to award such judgment and take such other and subsequent proceedings to enforce the same as may be applicable to convictions against corporations.

## IV. LIABILITY OF.

230. The action was brought to have a certain resolution of the Corporation expunged from the minutes, and also claiming damages. The Court was unanimous that the resolution should be struck from the minutes. There was no difficulty as to that. The other point was as to the damages. The directors of a corporate institution acting under color of

a resolution of the corporation, choose to do an act which is injurious to a third party, the institution or corporation which does this has to answer. The judgment of the Court below was perfectly well founded and must be confirmed.

231. *For debts contracted previous to incorporation*.—The plaintiffs sued the defendants a municipal corporation for services rendered in procuring the passage of its Act or charter of incorporation. Defendant pleaded, 1st, a *défense en droit*, and 2nd, a peremptory exception, both of which were to the effect that it had no existence as a corporation at the time the services were rendered; that the plaintiffs were really employed by the gentleman who got the Act passed and had no recourse except against them personally, and they, the defendants, having at that time no existence, could neither employ nor authorize others to employ plaintiffs. *Held* that there was a quasi-contract which bound the defendants under authority of 1042 C. C. (1) And that apart from the question of quasi-contract the obligation of the defendants was supported by the principle that they had taken and used what was got by the plaintiffs' services, and they could not make profit at their expense. (2) *DeBellefeuille & La Municipalité du Village de St. Louis du Mile End*, 25 L. C. J. 18, S. C., 1880.

V. NOT AFFECTED BY KNOWLEDGE OF THEIR OFFICERS IN THEIR INDIVIDUAL CAPACITY *see* BANKS.

#### VI. POWERS OF.

232. The Montreal Telegraph Company agreed with the Great Western Company, to lease all its lines to the latter for the term of 97 years, the Great North Western Company to manage administer and work the lines and to pay the Montreal Company the sum of \$165,000 per annum in quarterly payments. The Montreal Company reserved its offices and some lands in Montreal and Ottawa. During these 97 years the Montreal Company were to have nothing to do with the management, the collection of tolls &c. The Great North Western had the control of all that, the only reservation being that, if the above mentioned payment was not made, the Montreal Company would have power to resume possession. It was stipulated that the tolls should not be altered by the Great Western Company, but the latter might request the Montreal Company to alter the tolls and the Montreal Company would have to alter them.

(1) A person incapable of contracting may, by the quasi-contract, which results from the act of another, be obliged toward him.

(2) *Papineau, J.*, on the demurrer, and *Johnson J.*, on the peremptory exception, both to the same effect.

*Held* reversing the judgment of the Superior Court (1) that the Montreal Telegraph Company, had sufficient power to make such an agreement without any special authorization in their charter. *Montreal Telegraph Company & Low*. 27. L. C. J. 257. Q. B. 1883.

233. *Held* also that the plaintiff had failed to show or prove any damage occasioned to himself personally by the agreement, and had failed to show that he had such right or interest as entitled him to maintain an action, more especially in his own name and on his own behalf. *Ibid*.

234. *To acquire real estate*.—The defendant being sued for part of the price of an immoveable purchased from the plaintiff pleaded that the plaintiff had acquired the immoveable in question by purchase from another without having the power so to do, being a corporation and by Art. 366 C. C. (1) incapable of acquiring or holding real property in mortmain, without special authorization. Plaintiff demurred on the ground of want of interest in defendant to so plead, the purchase by the plaintiff being *res inter alios acta*. *Held* that the incapacity referred to in Art. 366 was not absolute and the burden was on the defendant to show that it existed in the case in question, which he had not done. *St. Ann's Mutual Building Society & Brown*, 4 L. N., 184, S. C. 1881.

235. *To carry on trade*. Case of *Kerry & Les Sœurs de l'Asile de la Providence*, (II Dig. 196-253,) reported at length 26 L. C. J. 51, Q. B. 1878.

#### VII. RIGHTS OF MEMBERS WITH RESPECT TO TRUST FUNDS.

236. Appellant, a minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, obtained an injunction on the 31st December 1878 against the corporation respondents and others, members of the said corporation, ordering them to abstain specially from disposing of the funds of the said corporation by making any payments therefrom, and generally from all acts of administration of the property under their control until further order of Court. *Held* that where a trust fund has been entrusted to a corporation subject to the payment of life annuities

(1) 25 L. C. J. 332 and 5. L. N. 12.

(1) The disabilities arising from the law are : Those which are imposed on each corporation by its title or by any law applicable to the class to which such corporation belongs ; those comprised in the general laws of the country respecting mortmain and bodies corporate, prohibiting them from acquiring immoveable property or property so reputed without the permission of the crown, except for certain purposes only, and to a fixed amount and value ; those which result from the same general laws imposing for the alienation or hypothecation of immoveable property held in mort main or belonging to corporate bodies particular formalities not required by the common law. 366 C. C.

to its founders and others, each founder has an interest beyond the mere reception of his annuity, and can claim that the fund be administered in strict accordance with law. *Dobie & The Board for the Management of the Temporalities Fund, &c.*, 26 L. C. J. 170, P. C. 1882.

### VIII. SERVICE OF.

237. A service at the office and place of business of a corporation is a personal service under the rule requiring a personal service against a *tiers-saisi*. *Beaulieu & Forgue*, 12 R. L. 331, S. C., 1883.

## CORRUPT PRACTICES—See ELECTION LAW.

### COSTS.

- I. ACTION CONTINUED FOR.
- II. COMPENSATION OF.
- III. DEPOSIT FOR IN REVIEW.
- IV. DISTRACTION OF.
- V. EXECUTION WILL NOT ISSUE FOR WHILE APPEAL PENDING.
- VI. IN ACTION FOR DAMAGES.
- VII. IN ACTION UNDER A LEASE.
- VIII. IN CASES OF ADMISSION WITHOUT DEPOSIT.
- IX. IN MATTERS OF EXPROPRIATION.
- X. IN REVIEW.
- XI. LIABILITY OF CREDITORS FOR UNDER THE INSOLVENT ACT.
- XII. OF ACTION EN BORNAGE.
- XIII. OF ACTION IN FORMA PAUPERIS.
- XIV. OF
  - Action withdrawn or dismissed sauf recours must be paid before proceeding again.*
- XV. OF CONTESTING REPORT OF DISTRIBUTION.
- XVI. OF DILATORY EXCEPTION.
- XVII. OF DISCONTINUED ACTION.
- XVIII. OF ENQUETE.
- XIX. ON DEMURRER.
- XX. ON MOTION FOR SECURITY.
- XXI. PRIVILEGE FOR.
- XXII. RIGHT TO.
- XXIII. SECURITY FOR.
- XXIV. TAXATION OF.
- XXV. WHERE DEFENDANT IS INSOLVENT.
- XXVI. WHERE OBJECTION RAISED BY THE COURT.
- XXVII. WHERE OPPOSITION MAINTAINED PRO-TANTO.

### I. ACTION CONTINUED FOR.

238. An attorney who has obtained *distriction de frais* in the Court below cannot intervene in appeal to protect his rights where the parties are about to settle without paying him; especially where he alleges nei-

ther fraud nor the insolvency of his client *McCord & McCord*, 2 Q. B. R. 367, Q. B., 1882.

239. Action to set aside a deed of obligation between father and son for want of consideration. After issue joined the case was inscribed for trial and the defendant was examined for the plaintiff. The case was then adjourned to a later day, and meanwhile the parties made an arrangement by which plaintiff agreed to discontinue his action on payment to him of \$300, which was done, each party paying his own costs. Subsequently defendant applied to the Court to be allowed to produce an additional plea based on the above arrangement. This was allowed, and the new plea concluded for the dismissal of the action, each party paying his costs. The plaintiff answered this new plea by alleging that the arrangement had been made in a fraudulent manner, and with the view of depriving the attorneys of plaintiff of their costs of which they had claimed distraction. The contest was now to ascertain whether the arrangement could be made to the prejudice of the attorneys. *Held*, that the plaintiff was not entitled to answer this plea by alleging that the settlement was fraudulent, and made with the view of depriving the attorneys of plaintiff of their costs. *Gosselin & Gosselin*. 5. L. N. 378. S. C., 1882.

### II. COMPENSATION OF.

240. The costs due on a judgment may be legally paid to and compensated by a debt due by the attorney, of record of the party to whom such costs are awarded, notwithstanding that such costs have not been awarded by distraction to the attorney in the absence of proof by the client that he had paid his attorney's costs. *Kilgour & Harvey*, 27 L. C. J. 138, S. C. R., 1882.

### III. DEPOSIT FOR IN REVIEW.

241. On an inscription in Review.—*Held* following *Lacombe & Ste. Marie, Leavitt & Moss and Jones vs. McNamee*, that when several defendants have pleaded separately the plaintiff inscribing in revision on all these contestations must make as many deposits as there are contestations. *Pednaud & Perron*, 7 Q. L. R. 319, S. C. R., 1881.

242. Where a plaintiff inscribed in review on two contestations but made only one deposit and the defendant moved to discharge the inscription in consequence.—*Held* that the plaintiff would be allowed to make another deposit on payment of costs of motion, but the inscription would stand. *McNamee & Jones*, 4 L. N. 102, S. C. R., 1881.

### DISTRACTION OF.

243. Judgment was rendered in Review in favor of the defendant and reversing the judgment of first instance with costs in the *Cour Inférieure* and in the Court of Review against

the plaintiff, but without saying "in favor of the defendant's attorney." Subsequently the words *distracts en faveur de Maître A. X. Talbot, procureur du défendeur* were added to the entry of the judgment in the register. On petition to have these words erased as not being in conformity with the judgment.—*Held* that where distraction of costs has been asked for by an attorney in his pleadings that the judgment must be held to have granted such distraction, unless otherwise expressed and that even where judgment is of a higher Court. *Morency & Fournier*, 7 Q. L. R. 9, S. C. R. 1880.

#### V. EXECUTION WILL NOT ISSUE FOR WHILE APPEAL PENDING.

244. While motion for leave to appeal from a judgment maintaining a demurrer was pending the successful party applied for execution for his costs which, after argument, was refused by the prothonotary. *Payette & Hatton*. 5 L. N. 239 S. C., 1882.

#### VI. IN ACTION FOR DAMAGES.

245. Where judgment for \$1 and costs for damages is rendered that means \$1 also for costs. *Lawrence & Hubert* 12 R. L. 109. S. C., 1882.

#### VII. IN ACTION UNDER A LEASE.

246. The costs in an action to set aside a lease for the violation of the obligations undertaken by the lease should be taxed according to the amount claimed. *McConville & Hochelaga Bank*. 11 R. L. 99. C. C., 1881.

#### VIII. IN CASES OF ADMISSION WITHOUT DEPOSIT.

247. In an insurance case there had been a reference to arbitration, and the sum of \$646.10 found to be due by the defendant company to plaintiff. Plaintiff sued for \$1173, and the defendant pleaded acknowledging the amount found on the arbitration but made no deposit. Judgment for the amount admitted by plea, with costs against plaintiff after plea filed. *DeMartigny & The Watertown Agricultural Insurance Co.* 4 L. N. 132, S. C. 1881.

#### IX. IN MATTERS OF EXPROPRIATION.

248. In a matter of expropriation, where \$600 was awarded by judgment in excess of that offered by the commissioners, the attorney's bill was taxed as in a first class case in the Superior Court, *Grace in re* 5 L. N. 119, S. C. 1881.

#### X. IN REVIEW.

249. Where a party inscribing in Review discontinues after inscription and after factum filed by respondent, the latter is entitled to costs as of a case before hearing. *Milloy & O'Brien*, 6 L. N., 336, S. C. R. 1883.

#### XI. LIABILITY OF CREDITORS FOR UNDER THE INSOLVENT ACT.

250. Where proceedings were taken by the assignee to an estate under the Insolvent Act and which was dismissed and there was nothing in the estate to pay the defendant's costs, an action against one of the creditors for his proportion of such costs was maintained. *Poulin & Falardeau*, 4 L. N., 317, C. C. 1881.

#### XII. OF ACTION EN BORNAGE.

251. Action *en bornage*. Defendant's property ran from south to north, and plaintiff's from east to west, forming the boundary of defendants in depth and of others in the same concession. The defendant who encroached considerably on the plaintiff's property claimed two boundaries, one to the east and the other to the west, between two of his neighbors and the plaintiff's property which he pretended had always divided the properties. *Held* that all the costs of the defendant should be borne by the defendant, as they were rendered necessary by his pretensions, and that the costs of *expertise* and *bornage* were the only ones which should be divided between them. *Roy & Gagnon*, 7 Q. L. R. 207, S. C. R., 1881.

252. Les frais de l'instance en bornage ne doivent pas être partagés entre les parties au litige; mais qu'ils doivent être supportés en entier par celle qui s'est refusée à un bornage à l'amiable, ou qui l'a rendu impossible par des prétentions que rejette le jugement. *Bélanger & Giroux*, 9 Q. L. R. 249, S. C., 1883.

#### XIII OF ACTION IN FORMA PAUPERIS.

253. The plaintiff, a bailiff, claimed \$8.05 from the defendant as the balance of the cost of the service for her of a subpoena in a case in which she was plaintiff *in forma pauperis*, and her action was dismissed. *Held* that the bailiff was an officer of justice and bound to give his service in such cases free of charge, but he had a right to recover his disbursements and the amount allowed by the tariff for travel was a disbursement for which he had a right to judgment. *Dion & Toussaint*, 7 Q. L. R. 54, C. C., 1881.

#### XIV. OF ACTION WITHDRAWN OR DISMISSED SAUF RECOURS MUST BE PAID BEFORE PROCEEDING AGAIN.

254. On a demand or application for discharge from insolvency under the Insolvent Act.—*Held* that the costs of a former petition for the same purpose must be first paid where the parties and proceedings were identical. *Gohier & Perkins*, 4 L. N. 299, S. C. 1881.

## XV. OF CONTESTING REPORT OF DISTRIBUTION.

255. On contestation of a report of distribution where a party was collocated for an amount under \$60, and his claim was over \$1000. *Held* that the costs of contesting such collocation should be taxed according to the amount of the claim, and not according to the amount of the collocation. *Leblanc & Tellier*, 11 R. L. 352, S. C. 1882.

## XVI. OF DILATORY EXCEPTION.

256. *Held* overruling *Martin & Foley* (1) that the costs of a dilatory exception for security did not depend on the result of the action but were payable by the plaintiff. *McLennan & Grange*, 4 L. N. 170, S. C. 1881.

## XVII. OF DISCONTINUED ACTION.

257. A defendant who has obtained *congé défaut* of an action with costs may, by petition in a second action for the same cause, demand a suspension until the costs of the first action are paid. *Moisan & Bourgeois*, 11 R. L. 120, C. C., 1871.

## XVIII. OF ENQUÊTE.

258. Lorsqu'une des parties succombe sur tous les faits qui ont fait la matière de l'enquête, quoiqu'elle puisse réussir d'ailleurs à obtenir jugement, les frais d'enquête doivent être mis à sa charge. *Filiatrault & Elie*, 7 L. N. 378, & M. L. R. 1 S. C. R. 66, 1884.

## XIX. ON DEMURRER.

259. Where demurrer is pleaded to a portion of the demand and maintained as pleaded the action being good for the balance, a fee of \$8.00 was allowed as on a demurrer dismissed. *Chevalier & Cuvillier*, 4 L. N. 306, S. C., 1881.

## XX. ON MOTION FOR SECURITY.

260. The Plaintiff in this case resided in Glasgow, Scotland, and the defendant filed an exception dilatoire to have the proceedings stayed until security for costs be put in, a power of attorney produced and a detailed account filed. The exception was maintained with costs. *Gray & Cleghorn*, S. C. 1884.

## XXI. PRIVILEGE FOR.

261. The creditor who is secured by hypothec and who takes a personal action against his debtor has no privilege for the costs thus incurred on the property hypothecated. *Bricault & Bricault*, 11 R. L. 163, S. C., 1861.

262. Where a defendant in an action of damages which has been dismissed with costs,

causes an immoveable belonging to the plaintiff to be taken in execution and sold by the Sheriff, he has a right to be collocated by privilege on the proceeds of sale for his costs of suit, as well as for the costs subsequent to judgment. *Tansey & Bethune*, 7 L. N., 133, Q. B. 1884.

## XXII. RIGHT TO.

263. The plaintiff contested an opposition filed by the assignee to the insolvent estate of the defendant. The contestation was entered upon because the assignee had admitted to plaintiffs attorney that he did not authorize the opposition. This was admitted by opposant, but it appeared that the opposition had been ordered by opposants partner and approved of by opposant. Review from the judgment condemning the plaintiff in the costs of contestation, on the ground that plaintiff was justified by the statement of opposant in contesting the opposition. *Held* to be no ground for revision. *Paquet & Poirier*, 5 L. N. 359, S. C. R. 1882.

## XXIII. SECURITY FOR.

264. The opposants five in number, of whom three lived in the United States, opposed the sale of certain property which had been seized and which they claimed belonged to them. The plaintiff and the defendant appeared on the opposition by the same attorneys. The defendant after notice to the opposants, presented a petition to the prothonotary for security for costs from the three absents opposants, which was granted with a delay of eight days only. The security was not furnished within the eight days, and on motion of the defendant the opposition was dismissed. The opposants inscribed in Review setting up that they were not bound to give security as opposants; that the demand for security could not be made until the parties had declared whether they intended to admit or contest; that the notice of motion was insufficient, and that in any case the opposition could only be dismissed with regard to the three residents, and not with regard to the other two who resided in the Province. *Held* that the non resident opposants were bound to give security, but that the delay granted them was altogether too short, and that the failure of the absentees to give security could not affect in any case those who were resident. Judgment dismissing opposition reversed, and one month from service of judgment allowed to the three non residents to put in security. *Miller & Déchêne*, 8 Q. L. R. 18, S. C. R. 1881.

265. On the contestation of a petition for discharge under the Insolvent Act 1875. *Held* that security could not be demanded of a foreign creditor contesting as the insolvent was the party moving. *Hoffer & Elliott*, 4 L. N. 298, S. C. 1881.

266. A foreign company which has a place

of business in the Province of Quebec is not bound to give security for costs in an action instituted in this Province. *Victoria Mutual Fire Insurance Co. & Carpenter*. 4 L. N. 351, S. C. 1881.

267. Defendant against whom attachment before judgment was issued, though an absentee, was not bound to give security for the costs occasioned by his petition to Court. *Hutchins & Ingrams*, 12 R. L. 671, S. C. 1881.

268. Where the defendant by dilatory exception asked for security for costs which was put in accordingly.—*Held* that he was entitled to costs of his exception independently of the result of the action. *McLennan & Grange* 4 L. N. 170, S. C. 1881.

269. The plaintiff, a non resident contested the collocation and privilege of the opposant who was a resident of the province of Quebec, and thereupon the opposant asked for security for costs. *Held* that notwithstanding the authority of *Webster & Philbrick*, that the plaintiff should give security to the opposant. *La Société anonyme des glaces et produits chimiques de St. Gobain & Cie & Gibernon*. 26 L. C. J. 246. L. C. 1882.

270. The plaintiff, a corporation created under the laws of the state of New Jersey, brought action against the defendant and was met by a demand for security for costs. Plaintiff demurred on the ground that they had an office and place of business in the province. *Held* that they were nevertheless bound to give security. *The Singer Manufacturing Co. & Beaucage*. 8 Q. L. R. 354. S. C. 1882.

271. Where opposition was filed to a seizure of a right of use and habitation on the ground that it was unattachable and the opposition was dismissed. *Held* that such right was a real right, and as such required a deposit of \$40 in review, under 497 C. C. P. (1) *Goulet & Gagnon* 8 Q. L. R. 208, S. C. R. 1882.

272. An action will be dismissed for failure to comply with an order to give security for costs, notwithstanding that the case was only returned into Court for costs. *East Hampton Bell & Grose*. 6 L. N. 22. S. C. 1882.

273. Dans cette cause le Bref était rapportable le 9 Mai, la motion pour cautionnement a été signifiée le 2 et produite et présentée le 10 du même mois. Granted. *Marcotte & Descoiteau*. 5 L. N. 336. S. C. 1882.

274. Dans cette cause le Bref était rapportable le 22 Septembre, la motion pour cautionnement a été signifiée le 25 du même mois. Et la Cour ne siégeant pas du 25 Septembre au 2 Octobre, la motion fut présentée

(1) This review cannot be obtained until the party demanding it has deposited in the office of the prothonotary of the court which rendered the judgment, and within eight days from the date of such judgment, the sum of twenty dollars if the amount of the suit does not exceed four hundred dollars, or of forty dollars, if the amount of the suit exceeds four hundred dollars; or if it be a real action. 497 C. C. P.

le 2 Octobre, premier jour du terme. Rejected. *Giles & O'Hara*. 5 L. N. 336. S. C. 1882.

275. The plaintiff alleging himself as of the city and district of Montreal sued in his quality of Receiver duly appointed by judgment of the court of chancery for Ontario to the Niagara District Mutual Fire Insurance Co., carrying on business in the Provinces of Ontario and Quebec. Motion for security and judgment as follows.—*Considérant* qu'il appert par la déclaration en cette cause que la compagnie appelée la "Niagara District Mutual Fire Insurance Company" pour et dans l'intérêt de laquelle le demandeur *es qualité* poursuit la présente demande, n'a pas d'établissement en cette province. Accordé, &c. *Giles & Chapleau*. 5 L. N. 373. S. C. and *Giles & Jacques*, Ib. and 27 L. C. J. 182. 1882.

276. Where security for costs is asked for by motion, the motion must be made within four days after the return of the writ or the production of grounds of intervention. *Canadian Bank of Commerce & McGauran*, 5 L. N. 128, S. C., 1882.

277. A non-resident, plaintiff contesting the collocation of an opposant, is bound to give security for costs. *Société anonyme des Glaces & Gibernon*, 5 L. N. 94, S. C., 1882.

278. If a plaintiff is domiciled in Quebec when he institutes his action, but afterwards during the pendency of the suit removes into another country, the defendant must make his motion for security and costs within four days from the time he obtains certain knowledge of the departure. *Hunter & Renzie*, 28 L. C. J. 252, S. C., 1883.

279. It is not sufficient that motion for power of Attorney, and security for costs be served stamped and filed within the four days from return of suit, it must also be presented within that delay either before the Court, if sitting, or a judge in chambers, or the prothonotary. *Potter v. McDonald*, 10 Q. L. R. 101, S. C., 1883.

280. A motion for security of costs may be presented after the expiration of four days from the return of the writ of summons, if notice thereof has been given within four days. *Bowker Fertilizing Co. & Cameron*, 7 L. N. 214, Q. B., 1884.

#### XXIV. TAXATION OF.

281. As to proportion of costs taxable against plaintiff on discontinuance of proceedings against one of three defendants, who has severed in his defense from the other two defendants who plead jointly. *Ives v. Seegmiller*. 6 L. N. 84, S. C. 1883.

282. When the judgment is for principal and costs, and the principal is less than \$100 the amount of the costs will be determined if interest has accrued so as to make the total over one hundred dollars, according to the total amount of such principal and interest, though the exact amount of the interest be not determined by the judgment. *Lemay & Boissinot*. 10 Q. L. R. 90, S. C. 1883.



282. On the revision of a bill of costs arising out of the appointment of a sequestrator for which the tariff makes no provision it was taxed as in the class of appointments of tutor or curator. *McLean & Phillips*. 7 L. N. 246, S. C. 1884.

283. Articulation of facts being filed on an exception to the form which raises questions of fact the costs occasioned by such articulations will be taxed in the bill. *George & Canadian Pacific Railway Company*. 12. R. L. 632, S. C. 1884.

#### XXV. WHERE DEFENDANT IS INSOLVENT.

284. Action against an insolvent who had not obtained his discharge, for a debt incurred previous to the assignment. Judgment granted but without costs. *Laurent & Thériault*. 4. L. N. 373. S. C. 1881.

#### XXVI. WHERE OBJECTION RAISED BY THE COURT.

285. Where on the contestation of a *tiers saisi* declaration the Court of Revision decided that the Court of first instance was without jurisdiction, and dismissed the contestation, no costs were awarded as both parties had acquiesced in it. *Lapointe & Bélanger*. 7. Q. L. R. 316. S. C. 1881.

#### XXVII. WHERE OPPOSITION MAINTAINED PRO TANTO.

286. Where an opposition founded on partial payments was maintained as to such payments and judgment reduced accordingly. Held following *Grange & McDonald*, that each party would pay his own costs. *Thibault & Fontaine*, 7 Q. L. R. 320, S. C., 1881.

### COTISATION.

I. BY CHURCH FABRIQUES, *see* CHURCH FABRIQUES.

II. BY MUNICIPAL CORPORATIONS, *see* MUNICIPAL CORPORATIONS.

### COUNCIL OF THE BAR—See BAR.

### COUNSEL.

I. FEES OF, *see* ADVOCATES.

### COUNTY COUNCIL.

I. LIABILITY OF FOR CARE OF REGISTRY OFFICE.

287. The registrar of the Co. of St. John brought action for \$935, for the heating, care

and cleaning of the building for seventeen years, and for furniture provided for the same under C. S. L. C., Cap. 24, Sec. 26, S. S. 5, which authorizes the Council to pass a by-law for the acquisition, construction and maintenance of an office for the registration of deeds, and of a fire proof vault. Plaintiff, however, had only recently discovered this provision, and according to his own admission, had no thought of making any claim on the Council when he rendered the services, &c. Action dismissed. *Chartrand & Corp. of County of St. John*. 6 L. N. 83, S. C. R., 1883.

### COUNTY TAXES

#### I. IMPOSITION OF.

288. The Corporation of the County of Hochelaga, being compelled to provide for the payment of certain costs incurred in suits to which the Corporation was a party, adopted a resolution imposing a tax on the several municipalities within the County, in proportion to the assessed value of their real property in order to cover the debt. To an action against the defendant, one of the municipalities so charged with a portion of the debt, it was pleaded that a tax cannot be imposed by the County Council otherwise than by by-law, and that the attempt of the plaintiff, corporation, to impose such tax by resolution was illegal. The Court maintained the defence. *Corporation of County of Hochelaga and Corporation of Village of Côte St. Antoine*. 6. L. N. 119. and 27 L. C. R. 177. C. 1883.

### COUPONS.

I. INTEREST ON.

II. POSSESSION OF DURING LITIGATION.

I. INTEREST ON.

289. Interest runs on the interest coupons of railway debentures from the dates on which they respectively fall due, without the necessity of putting the debtor *en demeure*. *Desrosiers & The Montreal Portland & Boston Railway Company*. 28. L. C. J. 1. & 6 L. N. 388. S. C. R. 1883.

II. POSSESSION OF, DURING LITIGATION.

290. On motion of the owner of bonds with coupons attached, the Court will order such coupons as are not in litigation in the appeal to be detached by the Clerk of the Court and delivered over to the party moving. *Montreal N. & B. Rly. Co. and Hochelaga Bank*, 27 L. C. J. 164, Q. B. 1883.

## COURT HOUSE TAX.

I. ON EXHIBITS HELD TO BE ULTRA VIRES, *see* LEGISLATIVE AUTHORITY.

## COURTS.

## I. DISCRETION OF IN FRIVOLOUS MATTERS.

291. Where opposition was brought to a seizure for a witness tax, on the ground that the execution should have issued as in the lowest class of case in the Circuit Court, that it would only have cost 30 cents instead of \$3.50, and in that any case there was an error of ten cents. *Held* reversing the judgment of the Court of Review and restoring that of the Superior Court which dismissed the opposition, that the opposition was properly dismissed as frivolous and for an insignificant amount and the Court had discretion so to decide. *Côté & Samson*, 8 Q. L. R., 357, Q. B. 1882.

## COVE RECEIPTS.

## I. POSSESSION OF.

292. Appellants seized on the river St. Maurice as belonging to the St. Maurice Lumber Co. (defendants) 5892 pine logs. Respondents filed opposition *afin d'annuller* by which they claimed a lien on the logs in virtue of three writings, *sous seing privé* by which the St. Maurice Lumber Co. transferred the logs to respondents by way of pledge for advances. *Held* that banks cannot acquire a lien on logs under the Banking Act, 34 Vic. Cap. 5, S. S. 46 and 47 (1) if the pledge of these logs was

(1) The bank may acquire and hold any cove receipt or any receipt by a cove keeper, or by the keeper of any wharf, yard, harbour or other place, any bill of lading, any specification of timber, or any receipt given for cereal grains, goods, wares, or merchandize, stored or deposited, in any cove, wharf, yard, lumber warehouse, mill, or other place in Canada or shipped in any vessel or delivered to any carrier for carriage from any place whatever to any part of this dominion, or through the same or on the waters bordering thereon, or from the same to any other place whatsoever and whether such cereal grains are to be delivered upon such receipt in species or converted into flour as collateral security, or for the due payment of any bill of exchange or note discounted by such bank in the regular course of its banking business, or upon any debt which may become due to the bank under any credit opened or liability incurred by the bank for or on behalf of the holder or owner of such bill of lading, specification or receipt, or for any other debt to become due to the bank, and such bill of lading, specification or receipt being so acquired, shall vest in the bank from the date of the acquisition thereof, all the right and title of the last previous holder thereof, and if such holder be the agent of the owner, within the meaning of the 59 Cap. of the C. S. of the late Province of Canada, then all the right and title of the owner thereof, to or in such cereal grains, goods, wares

not made for previous indebtedness, or if they were not held by virtue of a transfer of a receipt of a cove keeper, or by the keeper of any wharf, yard, harbour or other place, or upon a specification of timber deposited in a cove wharf, yard, harbour, warehouse, mill or other place in Canada within the meaning of the said Act and that to acquire a lien under Arts. 1745-1966-1967. C. C. (2) then must be an actual delivery or possession of the property pledged, or of some document in use in the ordinary course of business entitling the bearer thereof to claim possession of such property. *Ross & Molsons Bank*. 2. Q. B. R. 82. Q. B. 1881.

## CREDITORS.

I. CONTRACTS MADE IN FRAUD OF *See* CONTRACTS.

II. ARE LIABLE INDIVIDUALLY FOR COSTS INCURRED ON BEHALF OF INSOLVENT ESTATE, WHERE NO ASSETS, *See* COSTS.

or merchandize, subject to his right to have the same retransferred to him, if such bill, note or debt be paid when due, and in the event of the non payment of such bill or note or debt when due, such bank may sell the said cereal grains, goods, wares or merchandize and retain the net proceeds, or so much thereof as will be equal to the amount due to the bank upon such bill or debt or note, with interest and costs, returning the overplus, if any, to the person from whom such interest was acquired by the bank.

47. No transfer of any such bill of lading, specification of timber, or receipt shall be made under this Act to secure the payment of any bill, note or debt, unless such bill, note or debt be negotiated or contracted at the time of the acquisition thereof by the bank, or upon the understanding that such bill of lading, specification of timber or receipt would be transferred to the bank, but such bill, note, or debt may be renewed, or the time for the payment thereof extended, without affecting such security.

(2) 1745. Bills of lading, warehousekeeper's or wharfingers receipts or orders for delivery of goods, bills of inspection of potash or pearlsh, and all other documents used in the ordinary course of business, as proof of the possession or control of goods, or reporting to authorize either by endorsement or by delivery, the possessor of any such document to transfer or receive the goods thereby represented, are deemed documents of title within the provisions of this chapter.

1966. Pledge is a contract by which a thing is placed in the hands of a creditor, or, being already in his possession, is retained by him with the owner's consent, in security for his debt. The thing may be given either by the debtor or by a third person in his behalf.

1967. Immoveables may be pledged upon such terms and conditions as may be agreed upon between the parties. If no special agreement be made, the fruits are imputed first in payment of interest upon the debt and afterwards upon the principal. If no interest be payable, the imputation is made wholly upon the principal. The pledge of immoveables is subject to the rules contained in the following chapter, in so far as they can be made to apply.

## CRIMINAL LAW.

- I. ABDUCTION.
- II. ACT CONCERNING FUGITIVE OFFENDERS—C. 44-45. VIC. CAP. 69 and 45 VIC. CAP. 21.
- III. ACT RESPECTING THE DUTIES OF JUSTICES OF THE PEACE OUT OF SESSIONS IN RELATION TO SUMMARY CONVICTIONS AND ORDERS.
- IV. ASSAULT.
- V. AUTRE FOIS ACQUIT.
- VI. BAIL.
- VII. BIGAMY.
- VIII. CRIMES ON THE SEAS.
- IX. DEPOSITION OF DECEASED IN MURDER CASES.
- X. DISCHARGE OF PRISONER AFTER CONVICTION QUASHED.
- XI. ERROR.
- XII. EVIDENCE.
- XIII. FALSE PRETENCES.
- XIV. INDICTMENT.
  - Defects in.*
    - For forgery.*
    - For receiving stolen goods.*
    - For wounding with intent.*
    - Signing of.*
- XV. LARCENY.
  - By bailee.*
- XVI. LIBEL.
- XVII. MAILING OBSCENE, ILLEGAL, OR OTHER FRAUDULENT MATTER.
- XVIII. MANSLAUGHTER.
- XIX. NEGLECTING TO PROVIDE FOR WIFE & C.
- XX. NUISANCE.
- XXI. OFFENCES AGAINST THE PERSON.
- XXII. PENALTY.
- XXIII. PERJURY.
- XXIV. PLEA OF RIGHT.
- XXV. PLEA OF TITLE.
- XXVI. PREVENTION OF CRIMES ACTS.
- XXVII. PROCEDURE.
- XXVIII. PROCEDURE AMENDMENT ACT.
- XXIX. RAPE.
  - Attempt to commit.*
- XXX. RECEIVING STOLEN GOODS.
- XXXI. RESERVED CASE.
- XXXII. SPEEDY TRIAL *See* C. 47 VIC. CAP. 41.
- XXXIII. VARIANCE BETWEEN INDICTMENT AND CONVICTION.
- XXXIV. VENUE.
- XXXV. VERDICT.
- XXXVI. WRIT OF ERROR.

## I. ABDUCTION.

293. Prisoner was for that he "did feloniously and fraudulently allure, take away and detain one L. D. out of the possession and against the will of her father J. B. D., he, the said J. B. D., having then the lawful care and charge of the said L. D., then being under the age of twenty-one years and having a certain legal, absolute and present right and interest in the following described property, &c." Then followed the description of the property, &c. The prosecution attempted to prove the interest

of L. D., in the property described by a notarial copy of the deed mentioned in the indictment. Objection was taken to this and maintained. It was then attempted to prove verbally that she had an interest worth \$10,000 in property generally. On a reserved case the Court said—I am inclined to think that the indictment should set forth the interest of the woman in the property. It is a substantial fact which the prisoner has a right to rebut. He cannot do this unless he is told what the interest is. But there can be no doubt that when the interest is set forth in the indictment, as it is in this case the prosecution must prove it as laid. The verbal evidence of an interest in property generally cannot sustain this indictment. *Regina & Kaylor*, 4 L. N. 196 & 1 Q. B. R. 364 Q. B., 1881, & 26 C. J. 36, Q. B., 1881.

294. But on a second point reserved.—*Held* that it was not necessary for the prosecution to prove the knowledge of the prisoner as to the interest of L. D. There were two categories in Sec. 54 of the Statute, 32-33 Vic., Cap. 20 (1) under which the indictment was brought. First, there was the case of a woman of any age possessing property abducted "from motives of lucre." If the prisoner had been indicted for this offence it would have been necessary to establish the motive, and to do this some proof and knowledge on his part, or at all events belief would probably be required. But the indictment was under the second disposition of the section which did not require that. *Id.*

(1) Where any woman of any age has any interest, whether legal or equitable, present or future, absolute, conditional or contingent in any real or personal estate, or is a presumptive heiress or co-heiress or presumptive next of kin, or one of the presumptive next of kin to any one having such interest, whoever from motives of lucre, takes away or detains such woman against her will, with intent to marry or carnally know her, or to cause her to be married, or carnally known by any other person; and whosoever fraudulently allures, takes away or detains such woman being under the age of twenty-one years, out of the possession and against the will of her father and mother or of any other person, having the lawful care or charge of her, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, is guilty of felony and shall be liable to be imprisoned in the penitentiary, for any term not exceeding fourteen years, and not less than two years, or to be imprisoned in any other gaol or place of confinement for any term less than two years, with or without hard labour, and whosoever shall be convicted of any offence against this section, shall be incapable of taking any estate or interest, legal or equitable, in any real or personal property of such woman, or in which she has any such interest, or which shall come to her as such heiress, co-heiress or next of kin as aforesaid; and if any such marriage as aforesaid shall have taken place, such property shall, upon such conviction, be settled in such manner, as the Court of Chancery in Ontario, the Supreme Court of Nova Scotia, or New Brunswick, or the Superior Court in Quebec, shall appoint, upon any information at the suit of the Attorney General for the Province in which the property is situated.

**ACT RESPECTING THE DUTIES OF JUSTICES OF THE PEACE OUT OF SESSION IN RELATION TO SUMMARY CONVICTIONS AND ORDERS.**

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—S. 61 of C. 31 of the Act passed in the Session held in the thirty second and thirty third years of Her Majesty's reign, intitled "An Act respecting the duties of Justices of the Peace in relation to summary convictions and orders" as amended by the Acts thirty third Vict. c. 27 and fortieth Vict. c. 27, is hereby further amended by adding the following sub-section thereto :—

"In all cases of appeal provided for by this Act, all appeals from the decision of the Stipendiary Magistrate or of any Justice or Justices of the Peace for the Districts of Muskoka and Parry Sound in the Province of Ontario, shall lie to, and may be brought before and heard and determined by the Court of General Sessions of the Peace for the County of Simcoe in the said Province ; all appeals from the decision of the Stipendiary Magistrate or of any Justice or Justices of the Peace, for the provisional County of Haliburton in the said Province, shall lie to and may be brought before and heard and determined by the Court of General Sessions of the Peace for the County of Victoria, in the said Province ; all appeals from the decision of the Stipendiary Magistrate or of any Justice or Justices of the Peace for the District of Thunder Bay, in the said Province, shall lie to and may be brought before and heard and determined by the Court of General Sessions of the Peace for the District of Algoma, in the said Province ; and all appeals from the decision of the Stipendiary Magistrate or of any Justice or Justices of the Peace for the District of Nipissing, in the said Province shall lie to and may be brought before and heard and determined by the Court of General Sessions of the Peace for the County of Renfrew." C. 47, Vict. Cap. 43, S. 1. Sec. 71 of the said Act as amended by the Act 37 Vict. C. 27, is hereby further amended by adding thereto the following as sub-section two :—

All returns under this section of convictions had in the District of Muskoka and Parry Sound, in the Province of Ontario, shall be made to the Clerk of the Peace, for the County of Simcoe, in the said Province ; all returns of convictions had in the Provisional County of Haliburton, in the said Province, to the Clerk of the Peace for the County of Victoria, in the said Province, all returns of convictions had in the District of Thunder Bay, in the said Province, to the Clerk of the Peace, for the District of Algoma, in the said Province, and all returns of convictions had in the District of Nipissing, in the said Province to the Clerk of the Peace, for the County of Renfrew, in the said Province. Sec. 2.

This act shall not apply to any appeal in respect of a conviction had before the passing thereof.

**IV. ASSAULT.**

295. A prisoner accused of assault with intent will be found guilty of simple assault. *Regina & O'Neil*, 11 R. L. 334, Q. B. 1881.

**V. AUTRE FOIS ACQUIT.**

296. Where the prisoner had been put on his trial on an indictment containing six counts charging him with shooting with intent to kill and murder, and was found guilty on the first count, which verdict was afterwards set aside on a reserved case on the ground that the indictment as far as said count on

which the prisoner was tried was concerned was bad.—*Held* that he could not be tried again on the same indictment as all the different counts referred to the same act of shooting. Prisoner discharged on plea of *autre fois acquit*. *Regina & Bulmer*, 5 L. N. 92, Q. B. 1881.

**VI. BAIL.**

297. The prisoner was arrested under the Post Office Act 1875 charged with having stolen a letter containing money from The Quebec Post Office. The proof showed that he had taken seven other letters as well. On application for bail—*Per curiam* : La règle en pareille matière a été ainsi formulée par le *Juge Power*, dans la cause *Exp. Maguire* : "It is laid down as law by the most distinguished judges in England that the principle upon which a party committed to take his trial for an offence may be bailed is founded chiefly upon the legal probability of his appearing to take his trial ; that such probability does not in contemplation of law exist where a crime is of the highest magnitude, the evidence in support of the charge strong and the punishment the highest known to the law." Dans l'espèce actuel la preuve est positive et directe, le crime très grave, et quoique la punition imposée par le statut ne soit pas "*the highest known to the law*," elle est très sévère : emprisonnement dans le pénitencier pour la vie ou pour pas moins de cinq ans. *Huot Exp.* 8 Q. L. R. 28, Q. B. 1882.

**VII. BIGAMY.**

298. On a trial for bigamy, the Crown having established the facts of the husband's two marriages, it is for the prisoner to show the absence of the first wife during seven years preceding the second marriage ; and where such absence is not proved, it is not incumbent on the Crown to establish the prisoner's knowledge that the first wife was living at the time of the second marriage. *Regina & Dwyer*, 27 L. C. J. 201, & 6 L. N. 66, Q. B., 1883.

**VIII. CRIMES ON SEAS.**

299. The prisoner, second mate of the *Star of England*, was tried before the Court of Queen's Bench, Quebec, on an indictment for manslaughter. He had illtreated on the high seas a seaman of the name of McK. so grievously that he had to be put on shore at Kamouraska, where he died ; his death, according to medical testimony, having been accelerated by the illtreatment he had received. On a reserved case, *held* that in order to prove that a steamer upon which a crime has been committed was a British steamer, it was not necessary to file the register of the steamer, and it is sufficient to establish that she sailed under the British flag. *Regina & Moore*, 2 Q. B. R., 52, Q. B., 1881.

300. But where a person dies in this Province from illtreatment received while on board of ship at sea, the trial for manslaughter of the author of such illtreatment must take place in the district where death ensued, and not in the district where the accused was arrested. *Id.*

#### IX. DEPOSITION OF DECEASED IN MURDER CASES

301. On a trial for murder, the Crown proposed to put in the examination of the deceased in presence of the prisoner as to the circumstances of the murder of which the prisoner was on trial, and have it read to the jury as direct evidence of the facts. The production of this examination was objected to on the ground that it was taken in the form of an information and complaint used when the accused was not yet arrested, that is to say, it is taken as thought the complainant were seeking a warrant of arrest. *Held* that the examination of a witness under 32-33 Vict. Cap. 30, s. 29, was inadmissible where there was no caption to the deposition as given in form. M. to show that a charge had been made against the prisoner, and that he, having knowledge of the charge, had a full opportunity of cross-examining the witness. The test of admissibility is the opportunity given the prisoner to cross-examine, he having knowledge that it is his interest so to do. *Regina and Milloy*. 6. L. N. 95. Q. B. 1883.

#### X. DISCHARGE OF PRISONERS AFTER CONVICTION GRANTED.

302. The prisoner was committed on a charge of shooting with intention to kill. He was convicted on one count out of six and the conviction subsequently quashed. Motion *ore tenus* to discharge refused, with a suggestion that the proper proceeding was by *habeas corpus*. *Held* that the Court on the appeal side would not interfere with an order to remand a prisoner to goal made by the Court on the Crown side. *Bulmer Exp.* 5 L. N. 22, Q. B. 1881.

#### XI. ERROR.

303. On the 30th October 1880, in the district of Rimouski, the plaintiff was tried on an indictment found against him for a charge of burglary, and the jury rendered a verdict of guilty of *recel*, upon which verdict the plaintiff in error was sentenced to be confined for two years in the penitentiary. *Held* that no such verdict could be rendered on the charge of burglary for which the plaintiff in error was tried, and no judgment be pronounced on such verdict which was accordingly set aside. *St. Laurent & Regina*, 7 Q. L. R. 47, Q. B., 1881.

304. Where after judgment maintaining a writ of error and setting aside a conviction for irregularities in the indictment, applica-

tion was made on the part of the Crown that the prisoner be remanded, the Court said this was matter within the discretion of the Court. If the indictment had been quashed on demurrer, there was no lack of precedents to justify the Court in ordering a fresh indictment to be laid, if it were satisfied that a crime had been committed. It was quite possible if this were a case of murder, and a failure of justice might result, that the Court would give time for a *certiorari* to bring up the papers. But this was not a case of that description. In all cases of writs or error that had come before the Court, there had never been a remand of the prisoner when the writ of error had been maintained. The prisoner, no doubt, could be tried again, for he had not been tried for the offence committed. But the Court could not order a new trial, because the judgment was to the effect that no crime was charged. The prisoner was then discharged. *Kelly & Regina*, Q. B. 1882.

305. The plaintiff in error had been convicted on an indictment for conspiracy to defraud by obtaining goods on false pretences. On a writ of error it was urged, 1st that the false pretence were not set up; and 2nd that the overt act only disclosed a civil trespass and consequently that they could not support an indictment for conspiracy. *Held* that the indictment for conspiracy differs from an indictment for false pretences, the offence in the former case being complete by the combination and agreement although nothing be done in execution of the conspiracy. Writ quashed. *Thayer & Regina* 5 L. N. 162, Q. B. 1882.

#### XII. EVIDENCE UNDER.

Whereas since the 24th section of the Act of the Imperial Parliament, 33rd and 34th, Vict. c. 52, intituled "An Act for amending the law relating to the extradition of Criminals" ceased to be in force in Canada, there is no provision for obtaining the testimony of witnesses in relation to any criminal matter pending in any court or tribunal, in a Foreign State in like manner as it may be obtained in relation to any civil matter: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

The testimony of any witness may be obtained in relation to any criminal matter pending in any court in any other of Her Majesty's Dominions, or before any Foreign Tribunal in like manner, as it may be obtained in relation to any civil matter under the Act 31st Vict., c. 76, intituled "An Act to provide for taking evidence in Canada, in relation to Civil and Commercial matters, pending before Courts of Justice in any other of Her Majesty's Dominions or before Foreign Tribunals"; and all the provisions of that Act shall be construed as if the term civil matter included a criminal matter, and the term cause included a proceeding against a criminal: Provided that nothing in this Act shall apply in the case of any criminal matter of a political character. C. 46 Vict. Cap 35.

306. When goods are obtained by a fraud, the Court will permit, without previous notice to the accused, the proof of similar frauds having recently been practised upon

others, in order to show the intent of the prisoner. *Queen vs. Durocher*. 12 R. L. 697. Q. B. 1382.

### XIII. FALSE PRETENCES.

307. In the spring of 1882, prisoner went to one McG. a large furniture dealer at Montreal and represented to him that he was about to open a hotel which he had rented at Ste. Thérèse, that he had made considerable repairs to the hotel and was rather short of money. He declared that he wanted for his hotel about eight or nine hundred dollars worth of furniture, which he proposed to purchase on credit, offering as security, a mortgage upon an immoveable property of which he was proprietor at Longue Pointe, and which he represented to be worth three to \$4000 over and above all charges and incumbrances. As McG. appeared to have some hesitation about the sufficiency of the security offered, prisoner proposed to give his property in payment for the furniture he required, but on the two following conditions. 1st that McG. would assume the payment of a certain annual rent of about \$200 to one Mrs. H; and 2nd that he would transfer back the property in question at the expiration of a period of three months on McG. being paid the full amount of his bill. The latter condition was particularly insisted upon by prisoner. The bargain proposed was agreed to by McG., and upon a deed with right of redemption being consented to by prisoner of the property mentioned above, he sold and delivered to prisoner the \$800 worth of furniture required by the latter, and prisoner had at first ordered the furniture to be delivered at the railway depot, but soon after countermanded that order and requested it to be delivered at his residence at St Jean-Baptiste village, alleging that the hotel was not quite ready for them. At the expiration of the stipulated time, no money being forthcoming and no demand for retrocession of the immoveable property being asked for, McG. became alarmed and made enquiries about prisoner and his property at Longue Pointe. He then discovered 1st that the payment to Mrs H for a sum of \$200 a year was more than the property could produce yearly. 2nd that prisoner had never rented any hotel at Ste Thérèse, nor was he to open any one there or elsewhere. 3rd that prisoner had played exactly the same trick upon three other furniture dealers, given them in payment other properties equally valueless; 4th that all the furniture purchased from him by prisoner had been sold by the latter below cost price, either by private sales or at auction. And being cross-examined McG. the complainant admitted that the representation which had induced him to part with the furniture was solely that the immoveable property offered him was worth between \$3000 and \$4000 over and above all encumbrances and not the story told by prisoner about his being about to

open an hotel at Ste Thérèse, it being a matter quite indifferent to him, where the furniture was put, the moment he had received the full value of what he had sold. Evidence was then offered on behalf of the Crown to show that a similar fraud had been lately practiced by the prisoner upon other furniture dealers. This was objected to by Counsel for the prisoner, on the ground that no other charge could be proved, except that laid in the indictment. In support of that pretention Sec 5 of the Larceny Act and sec 3rd of Chap. 26th of the 40th Vic. (1877) were quoted, those sections it was alleged, pointing out in what instances the common law rule may be departed from. This objection was overruled by the presiding judge, who held that the evidence offered could be received in order to prove the intent of the prisoner. At the close of the case for the Crown, the prisoner counsel submitted that the Crown had failed to make out a case against the prisoner and urged the following grounds. 1st That the false representation with respect to the opening of an hotel at Ste. Thérèse, not having been that which induced McG., to part with his property it formed no part in the ingredients forming the crime of obtaining property by false pretences. 2nd. That the false representation concerning the value of the property offered in payment, could not form the basis of a charge like the present one. The Court maintained the defence on both of these grounds and instructed the jury to acquit the prisoner. *Queen vs. Durocher*. 12 R. L. 697. Q. B. 1882.

308. The defendant was charged with having at Montreal, on or about the 11th day of April, 1882, by false pretences and with intent to defraud obtained from G. B. B., in money and in valuable securities, the sum of \$25,000, the false pretences consisting in the verbal assertion made to complainant through W., defendant's attorney, that the (defendant) had a good title to certain real property then offered as security for the advance of the said sum, and that such real property was clear of incumbrance; and also consisting in the written assertion made by the defendant himself in the deed of obligation to complainant that the property mortgaged well and truly belonged to him, and moreover in the verbal reiteration made at the time of the passing of the deed that the (defendant) was the sole owner of said real property; whereas in truth and in fact a portion of that real property (namely, three eights of the same) did not then belong to him, but belonged to his daughter, Madame K. After consideration, defendant was committed for trial to the Q. B. On the first trial the jury disagreed and were discharged, and on a second trial the defendant was found guilty and condemned. *Regina and Judah*. 7. L. N. 385, 1884.

### XIV. INDICTMENT.

309. *Defects in.*—On a trial for intent to

murder, a reserved case was brought before the Queen's Bench in Error and Appeal, on a motion in arrest of judgment which impugned the indictment upon which the defendant had been convicted on the ground that the words "of malice aforethought" had been omitted from the averment therein of the intent to murder and the word *feloniously* had been written *felonious*. *Held* on the latter point that the Statute empowered the Court to adjudicate not on what merely appeared on the face of the case reserved, but on what in addition thereto had been therein reserved for their consideration, and the Court was therefore unable to look at it; but with regard to the first point the omission of the words "of malice aforethought" was a substantial defect in the indictment such as could not be cured by amendment or covered by the verdict, and judgment therefor should be arrested. *Regina & Carr*, 26 L. C. J. 61, Q. B., 1872.

310. But in another case in which the prisoner was indicted for feloniously and unlawfully wounding A. B., with intent thereby then feloniously, wilfully and of his malice aforethought to kill and murder the said A. B.; and by a second count with feloniously and unlawfully wounding the said A. B. with intent thereby then to commit murder. *Held* that the offence charged in the second count was described in the words of the Statute, 32 and 33 Vic., Cap. 20, Sec. 10, by which the offence of wounding with intent to commit murder was made different in nature from what it was under the common law, and as the prisoner had taken no objection to it until after verdict, that the motion in arrest of judgment could not be maintained. *Regina & Deery*, 26 L. C. J. 129, Q. B., 1874.

311. *For forgery—per curiam*.—The plaintiff in error, was indicted for having feloniously forged a certain promissory note, and by a second count he was charged with having feloniously uttered a promissory note with intent to defraud. The prisoner demurred to the indictment, but the demurrer was overruled, and he had been convicted and sentenced to one year's imprisonment. He applied to have a case reserved, but was refused, and now he brought the same objections before this Court by means of a writ of error. The grounds of error were, first, that it was not stated in the indictment that the promissory note, alleged to have been forged, was for the payment of money, and, secondly, that the note was not sufficiently described in the indictment. It was merely stated that it was a promissory note. Section 49 of the Statute covered the second objection, it being no longer necessary to describe the note in the indictment. There remained the first objection complaining of the absence of the words "for the payment of money." In the form appended to the Statute, there appeared the expression "promissory note, &c." Did the "&c" refer to the words "for the payment of money," or did the "&c"

refer to the other instruments? There was a doubt as to what it referred to and, therefore, the form was not clearly indicative of the intention of the Legislature. The Court had, therefore, to look into the precedents. A great many had been cited, but none of them touched this very question. Some were under the old law, and the decisions did not apply. The case, then, was in this position: the words "for the payment of money" were in the enacting clause of the statute, and there was no offence if it was not a promissory note "for the payment of money." Against this it was urged that a promissory note, under our Civil Code, cannot be for anything else except for the payment of money. It might be observed that the words formerly applied to bills of exchange as well. Now the words "for the payment of money" were not added in the case of bills of exchange, but the Legislature had left attached to the offence of forging a promissory note the condition that it must be for the payment of money. When the Court referred to indictments in England, it was impossible to find one in which the words "for the payment of money" were not found, unless the instrument was described so as to show that it was for the payment of money. In the United States also this was the universal practice. It would be a dangerous precedent if the Court were to allow indictments to be drawn in a form different from that prescribed by the law, and universally practised up to the present time. The Counsel representing the Crown argued the case with a great deal of ability and care, but he was not able to cite a single instance where these words had been omitted from the indictment. The Court had been equally unsuccessful. His Honor held in his hand a number of indictments which were in the records of this Court, and in every case the words "for the payment of money" were inserted. The Court was not disposed to make a precedent which would sanction a departure from this practice. *Kelly & Regina* Q. B. 1882.

312. *For receiving stolen goods*.—The prisoner was indicted for feloniously receiving stolen goods on a day in the indictment, and it was proved that the receiving of the property described extended over a considerable period exceeding six months. *Held* that the Crown was not bound to elect on which of the receipts it intended to proceed against the accused. *Regina & Suprani*, 6 L. N. 269, Q. B. 1882.

313. *For wounding with intent*.—On a reserved case, *held* that the words "feloniously and of his malice aforethought" were omitted in the averment of the intent, in a count of an indictment for wounding with intent to murder. *Held* that the count was insufficient and that the offence was not described in the words of the Statute. *Regina & Bulmer*. 5 L. N. 287, Q. B. 1881.

314. *Signing of*.—Appeal from judgment

of the Queen's Bench (1) on the question as to whether the Attorney General or Solicitor General could delegate to the Counsel for the Crown the authority to direct that an indictment be laid before the grand jury under 32 & 33 Vict., cap. 29, sec. 28. *Held* (reversing the decision of the Queen's Bench) that the Attorney General had no authority to delegate the judgment and discretion of another the power which the Legislature has authorized him personally to exercise; that no power of substitution had been conferred and therefore that the indictment was improperly laid before the grand jury. *Abrahams & Regina*, 4 L. N. 90, 5 S. C. Rep. 10, Su. Ct. 1881.

315. *Held* that where the preliminary formality required by sec. 28, 32, 33, Vict., c. 26, concerning criminal procedure has not been complied with an indictment for perjury will be quashed if it has not been preferred by the direction in writing of the Attorney General himself. *Regina & Granger*, 7 L. N. 247, Q. B. 1884.

#### XV. LARCENY.

316. Prisoner appeared to answer to a charge of having, on 26th October last, stolen the sum of \$568.75, the property of P. T. A second count in the indictment was to the effect that he had received the money known it to have been stolen. Prisoner and P. T. were in partnership from May to August, when their premises were burnt down. They thereupon dissolved partnership, it being agreed that the assets should be equally divided between them. There were two insurance policies among the assets, payment being claimed upon them on October 26th T. and prisoner went to the insurance office to settle the matter, and obtained a cheque for the amount claimed. This the prisoner took charge of, instead of sharing the sum equally as had been agreed, and criminal proceedings were instituted.

P. T., carpenter, deposed that he had been in partnership with prisoner from May to August, 1881. Their place of business was burnt down on July 29th, and on the 17th August the partnership was dissolved, an agreement being made to share the profits equally. A policy was held by the firm against the Dominion Insurance Company, and another against the Canada Insurance Company, the two amounting to \$20,000. The Dominion Company paid them a cheque for their claim on July 26th, and they proceeded together to the bank to get it cashed. The prisoner received bills for the amount, but when witness demanded his share prisoner declined to comply. The witness called for the money several times, but on each occasion was refused. Counsel submitted that the Crown had no case, as the money was proved never to have been in the physical possession of T. and hence no larceny could have taken place.

(1) II Dig. 219-412.

His Honor concurred, and charged the jury in accordance. A verdict of "not guilty" was returned. *Mooney & Regina*. Q. B. 1882.

317. *By bailie*.—A difficulty having arisen between the shipper and the master of a vessel as to the exact quantity of goods shipped each tendered a bill of lading in conformity with his pretensions as to the quantity of cargo received. A writ of revendication was then issued at the instance of the shipper to attach the cargo, and a guardian appointed by the sheriff. While the cargo was so under seizure and in charge of the guardian the master put to sea but was over taken and brought back to Quebec on an accusation of larceny. *Held* that under the circumstances there was no *animus furandi* and therefore no larceny, even *custodia legis*. *Regina & Sultis*. 7 Q. L. R. 226. S. P. 1881.

#### XVI. LIBEL.

318. On an indictment for libel, published and contained in a news-paper, called *L'Univers*.—*Held* on demurer to a plea of justification that the defendant could plead that all he had written was true and that it had been written in the interest of the public. *Regina & Laurier*. 11 R. L. 184. Q. B. 1881.

319. Evidence that the defendant in a criminal prosecution is, at the time of the trial, editor and proprietor of a journal in which the libel was printed, is insufficient. The defendant should be proved to have been a proprietor or publisher at the date of publication. *Regina & Sellars*, 6 L. N. 197, Q. B. 1881.

#### XVII. MAILING OBSCENE, ILLEGAL OR OTHER FRAUDULENT MATTER.

Sub-section twenty-seven of section seventy-two of the said Act is repealed and this following sub-section is enacted in lieu thereof:—

"27. To post for transmission or delivery by or through the post any obscene or immoral book, pamphlet, picture, print, engraving, lithograph, photograph or other publication, matter or thing of an indecent, immoral, seditious, disloyal, scurrilous or libellous character, or any letter upon the outside or envelope of which, or any post card or post band or wrapper upon which there are words, terms, matters or things of the character aforesaid, or any letter or circular concerning an illegal lottery, so called gift concert, or other similar enterprise, offering prizes or concerning schemes devised and intended to deceive and defraud the public for the purpose of obtaining money under false pretences, shall be a misdemeanor. 46 Vict. Cap. 18, Sec. 1.

#### XVIII. MANSLAUGHTER.

320. The prisoner was indicted for manslaughter. The evidence established that one T. an habitual drunkard, went to an hotel in Quebec where he met the prisoner and some of his companions. T. put himself in the way to be offered drink, which the prisoner ordered for him and paid for. Prisoner then gave him three other glasses of liquor (proved to be three quarters whiskey reduced and



one quarter wine) which the deceased drank in rapid succession. Insisting on the prisoner's capacity to drink, prisoner offered to make bets, that deceased could drink more, and even offered him a share of one of the bets. In this way deceased was induced to drink two very large tumblers full of a mixture of beer, whiskey and wine. Shortly after the deceased was overcome by the drink, became unconscious, and was carried home in a cab, and died next morning, without ever having recovered speech or consciousness. In charging the jury, the court said that drinking with another or ever giving another drink, was in itself innocent and if the person to whom the drink was given died of the effects of it the party giving it was not responsible. But if the jury were satisfied that the drink was given not out of good fellowship but with the intention of making the deceased ill or drunk, it was an illegal act, and if the man died of the effects of the drink so given, it would be manslaughter in the party giving it. Prisoner was acquitted. *Regina & Lortie*, 9 Q. L. R. 352. Q. B. 1883.

#### XIX. NEGLECTING TO PROVIDE FOR WIFE, &c.

321. On a trial for neglecting to provide for wife.—*Held* that the words in section 25, 32, 33 Vict., cap. 25, "so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant has been or is likely to be, permanently injured" must be read as applying to the "wife, child, ward, lunatic or idiot," mentioned in the first part of the section, notwithstanding that in the repetition of the enumeration "apprentice or servant" are alone mentioned, and an indictment which omits such allegation is bad and will be quashed. *Regina & Maher*, 7 L. N. 82, Q. B. 1884.

322. And in such case the wife is a competent witness for the crown. *Id.*

323. But in an indictment under 32-33 Vic. c. 20, s. 25, it is not necessary to allege that by the refusal and neglect of the defendant to supply the necessary food, etc., to his wife, her life had been endangered or her health permanently injured; nor is it necessary to make proof to that effect. *Regina & Scott*, 7 L. N. 322 & 28 L. C. J. 264, Q. B. 1884.

#### XX. NUISANCE.

324. The defendant, agent of the Bell Telephone Co. of Canada, was indicted for illegally erecting three telegraph poles in Buade street a leading thoroughfare in the city of Quebec, thereby obstructing the Queen's highway, to the common nuisance of the public. The Company was incorporated by Act of the Parliament of Canada, 43 Vict., cap. 67, with power to establish telephone lines in the several Provinces of the Dominion, and to construct, erect and maintain lines along any highway, street, bridge, watercourse or any other such place, or across or under any nav-

igable waters, either wholly in Canada or dividing Canada from any other country, "provided that in cities, towns and incorporated villages the opening up of the street for the erection of poles, or for carrying the wires underground shall be done under the direction and supervision of the engineer or such other officer as the council may appoint, and in such manner as the council may direct and that the surface of the street shall in all cases be restored to its former condition by and at the expense of the Company." This charter and the consent of the council duly obtained were relied on by the defendant as a plea to the indictment. The jury, under the direction of the Court, found a verdict of guilty, subject to the question reserved for the determination of the Court *in banco*, whether the said Company had authority under their statute or were otherwise authorized by law to place the said poles in the said street. (1) *Regina & Maher* 7 Q. L. R. 183, & 5 L. N. 43, Q. B. 1881.

#### XXI. OFFENSES AGAINST THE PERSON.

The fiftieth section of the Act passed in the thirty second and thirty third years of Her Majesty's reign chaptered twenty, intituled "An act respecting offenses against the person" is hereby repealed, and the following section is enacted in lieu thereof:—

Q. 48-49 Vict. Cap. 182. Sect. 50. Every one who by false pretences, false representations, or other fraudulent means,—

"(a.) Procures any woman or girl under the age of twenty one years, to have illicit carnal connection with any man other than the procurer; a "b" Inveighles or entices any such woman or girl to a house of ill-fame or assignation for the purpose of illicit intercourse or prostitution, or who knowingly conceals in such house any such woman or girl so inveighled or enticed. "Is guilty of a misdemeanour, and is liable to two years imprisonment. "2 Whenever there is reason to believe that any such woman or girl has been inveighled or enticed to a house of ill-fame or assignation, as aforesaid, then, upon complaint thereof, being made under oath by the parent master or guardian of such woman or girl, or in event of such woman or girl having neither parent master or guardian in this Province in which the offense is alleged to have been committed, then by any other person, to any justice of the Peace, or to a Judge of any Court authorized to issue warrants in case of alleged offenses against the Criminal Law, such Justice of the Peace or Judge of the Court may issue a warrant to enter by day or night, such house of ill-fame or assignation, and to search for such woman or girl and bring her and the person or persons in whose possession she is, before such Justice of the peace or Judge of the Court who may on examination, ordered her to be delivered to him, parent, masters or guardian, or to be discharged as law and Justice require." Sec. 2.

#### XXII. PENALTY.

325. On a petition for *habeas corpus* it appeared that the petitioner had been condemned by the Recorder under the provisions of 32 and 33 Vic. Cap. 32 sec. 17 to a

(1) See LEGISLATIVE AUTHORITY.

fine of \$100, and to be imprisoned at *hard labor* for the space of six months. *Per curiam*.—The statute permits three kinds of punishment. 1st Imprisonment not exceeding six months with or without hard labor. 2nd. Fine not exceeding with the costs \$100; Fine and imprisonment not exceeding the said period and term. It is contended for the conviction that the third form of penalty allows fine and imprisonment *with hard labor*. To arrive at such a conclusion we must ignore not only the common use of a technical term but the plain meaning of a word. Imprisonment does not itself include hard labor, which is an aggravation of the penalty just as is solitary confinement, bread and water and whipping. Again imprisonment in the language of the common law has never been held to permit of any addition. Fine and imprisonment are the common law punishments for all misdemeanors, and without the authority of a statute no other punishment has ever been added. Conviction quashed in two cases (1) *Lefevre Exp & Dufresne Exp.* 4 L. N. 253, Q. B. 1881.

#### XXIII. PERJURY.

326. On a reserved case from a conviction for perjury.—*Held* that where the alleged perjury was committed in an issue in the Circuit Court in which it was proved, a plea had been filed, but the record produced and proved in the Criminal Court did not contain such plea, no ground for new trial. *Regina vs. Ross*, 28 L. C. J., 261 Q. B., 1884.

327. And it is not necessary to allege in the indictment or show in evidence that the subject matter of the perjury was material to the issue in which the perjury was committed. *Ib.*

328. Where from all the circumstances, it appears that the defendant may have been under a misapprehension as to the nature of the questions put to him or the jury may have been misled, the Court will, in its discretion, grant a new trial. *Ib.*

#### XXIV. PLEA OF RIGHT.

329. On a complaint for malicious injuries to property a plea that the defendants acted on the occasion complained of, the one as a municipal officer, and the other as his assistant, is sufficient to oust the jurisdiction of the justice. *Kenny and Berryman*, 9. Q. L. R. 277. Po. Ct. 1883.

#### XXV. PLEA OF TITLE.

330. To a prosecution under 32 and 33 Vic. Cap. 22 for having illegally and maliciously cut wood on the property of the com-

(1) For the the remarks of Monk J. decided in a contrary sense in *Cherel Exp.* with the approval of some of the other Judges see 4 L. N. 303. Ed.

plainant the defendants pleaded "not guilty" on the ground that both they and the plaintiffs were members of the Huron tribe of Indians, and they had a right to cut wood on the property in question but produced no title in support of such pretention.—*Held* that the court had a right to enter into the proof of property to see if the plea was *bona fide*. *Picard and GrosLouis*. 7 Q. L. R. 131, Q. S. 1881.

XXVI. PREVENTION OF CRIMES ACTS *See* CAP 44 VIC. CAP. 29. C. 45 VICT. CAP 38. C. 46 VIC. CAP. 33.

#### XXVII. PROCEDURE.

331. On the preliminary investigation of a criminal charge against the returning officer for the county of Montmagny arising out of an election for the Quebec Legislature.—*Held* that the clerk of the crown in chancery could not, under any provision of the Quebec Elections Act, refuse to produce the ballot papers when summoned to do so at such examination, and where he persisted in doing so and was committed to gaol he could not be liberated on *habeas corpus*. *Huot Exp.* 8 Q. L. R. 57. S. C. 1881.

332. On an appeal from a decision of the police magistrate to the Court of Queen's Bench the question was raised as to who should begin, the respondent contending on the one hand, that the appellant was bound to support his appeal, whilst on the other hand the appellant affirmed that the appeal was but a new trial leaving both litigants in the same respective positions of complainant and accused, which existed previously before the magistrate. *Held* that the latter pretention was the correct one, and ordered the complainant before the court below to proceed with his case. *Gibbons & Tempalay*. 12. R. L. 696, Q. B. 1884.

#### XXVIII. PROCEDURE AMENDMENT ACT.

Whereas the mode of proceeding to compel Corporations aggregate to appear and plead to bills of indictment found against them is attended with delay and expense: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Whenever a bill of indictment for a misdemeanour shall be found against a Corporation aggregate at any Court of Oyer & Terminer, & General Gaol delivery, Circuit Court, County Court or other Court, having jurisdiction, it shall be the duty of such corporation to appear by their attorney in the Court in which such indictment has been found and to plead or demur thereto, in like manner, as in the case of such an indictment found against a natural person. Q. 46, Vict. Cap. 84, Sec. 1. No suit of certiorari shall be necessary to remove any such indictment into the Court of Queen's Bench, or other Supreme or Superior Court of any Province in the Dominion, with a view of proceeding to compel the defendant to plead thereto; nor shall it be necessary to issue any writ of *distraint* or other process, to compel defendant to appear and plead to such indictment. Sec. 2.

It shall be lawful for the prosecution when any such indictment has been found against a corporation aggregate, for the clerk of the Court, where such indictment is founded on a presentment of the grand Jury, to cause a notice thereof to be served on the Mayor, or chief officer of such corporation or upon the clerk or secretary thereof, stating the nature and purpose of such indictment and that unless such corporation appears and pleads thereto in two days after their service of such notice, a plea of not guilty will be entered thereto, for the defendants by the Court, and that the trial thereof will be proceeded with in like manner, as if the said corporation had appeared and pleaded thereto. Sec. 3.

In case the said corporation does not appear in the Court in which the indictment has been found, and plead or demur thereto, within the time specified in the said notice, it shall be lawful for the Judge presiding at such Court, on proof to him by affidavit of the due service of such notice, to order the clerk or proper officer of the Court, to enter a plea of "not guilty" on behalf of the said Corporation; and such plea shall have the same force and effect as if the said Corporation had appeared by their attorney and pleaded the same. Sec. 4.

In either case, whether such Corporation appear and plead to the indictment or whether a plea of "not guilty" be entered by order of the Court, it shall be lawful for the Court to proceed with the trial of the indictment in the absence of the defendants, in like manner as if they had appeared at the trial and defended the same, and in the case of conviction, to award such judgment and take such other and subsequent proceedings to enforce the same as may be applicable to convictions against corporations.

#### XXIX. RAPE.

333. *Attempt to commit.* Prisoner was indicted under 32-33 Vic. Cap. 20. Sec. 53, for an attempt to commit rape upon a child between 10 and 12 years of age. On the part of the defence it was attempted to prove that the girl had had connection with other young persons and that she had consented to the alleged acts of the prisoner. *Held* that the consent of the child was immaterial and therefore that evidence of such consent would be rejected. *Regina and Paquet.* 9 Q. L. R., 351. Q. B. 1883.

#### XXX. RECEIVING STOLEN GOODS.

334. *Case of Regina and Perry (II Dig. 225-433) reported in extenso* 26 L. C. J. 24. Q. B. 1879.

335. During the night of the 15th and 16th of January 1884, thieves broke into the brokers office of one D in Quebec, and carried off some \$4000. The money was in bank bills, Dominion notes, and gold and silver. A silver watch also was stolen. The next day the police arrested two strangers on suspicion. These persons were searched and part of the stolen money found on them. During the next few days, the newspapers published long accounts of the robbery and some details regarding one of the persons arrested who was recognized as an old offender. This person on the afternoon following the robbery, went to the residence of the defendant L, who kept a book store and represented himself as the nephew of L, and after calling on the family upstairs and learning that L was absent from

the city he came downstairs to the bookstore and introduced himself to F., the other defendant. His story to him was that he had come to Quebec with some Americans to purchase horses and deposited with F. a parcel of bank notes and a small bag containing gold and silver money and also a silver watch. On his return to his boarding house the man was arrested. L., on his return from Three Rivers in the evening was informed of the circumstances by F. his clerk, and that the package had been placed in the vaults for safe keeping, during the evening. F, at the request of L, took the parcel out of the vault and delivered it to L, who examined it and verified what was in it. They were then put back in the Cash box and replaced in the vault. It was proved that at this time L, knew who it was who made the deposit, and that he had before been condemned for theft and similar offences. *Held* that under the above circumstances, the defendants were guilty of receiving stolen goods knowing them to be stolen, and the fact that they derived no benefit from the theft did not relieve them from the responsibility of concealing it. *Regina and Fournier*, 10 Q. L. R. 35, Q. B. 1884.

#### XXXI. RESERVED CASE.

336. On a reserved case by the Judge of sessions at Montreal to obtain the opinion of the Court upon the question whether the Quarter Sessions can try a case of forgery created felony by statute the question arose whether the Queen's Bench had jurisdiction under the statute to hear such a reserved case. *Per Curiam.*—The first difficulty is whether this Court has any jurisdiction under the statute to hear a case reserved by the Judge of Sessions trying a case under the Speedy Trials Act. The Act makes that Court a Court of record but describes it as proceeding out of Sessions. The Act which grants the criminal appeal is very special. It says: "when any person has been convicted of any felony or misdemeanor at any criminal term of the said Court of Queen's Bench, or before any Court of Oyer and Terminer and gaol delivery or Quarter Sessions the Court before which the case has been tried may in its discretion reserve any question of law which has arisen on the trial, &c." The question is whether the speedy trials Court comes under any of these denominations. The Court is of opinion that the provisions of the law allowing a Speedy trial in certain cases creates a new jurisdiction, and the law as to the reservation of cases does not apply to it. The rule is that the appeal cannot be extended beyond the cases laid down. Reserved case sent back. *Roy & Malouin*, 4 L. N. 372, and 2 Q. B. R. 66, Q. B. 1881.

#### XXXIII. VARIANCE BETWEEN INDICTMENT AND CONVICTION.

337. The plaintiff in error was indicted for

burglary and by the verdict he was convicted of receiving stolen goods knowing them to be stolen. He was sentenced to be imprisoned in the penitentiary and was suffering the punishment. On a writ of error the court set aside the conviction. *St. Laurent & Regina*, 4 L. N. 100. Q. B. 1881.

#### XXXIV. VENUE.

338. The prisoner was convicted at Quebec of manslaughter. He and the deceased were serving on board a British ship and the latter died in the district of Kamouraska, where the ship was loading, from injuries inflicted by the former on board the ship on the high seas. *Held* (on a reserved case) that as the deceased had been hurt upon the sea, and the death happened in another district he should have been tried there and not in the district of Quebec and the conviction was wrong. *Regina & Moore*, 8 Q. L. R. 9, & 11 R. L. 180, Q. B. 1881.

#### XXXV. VERDICT.

339. On a charge of burglary, only the prisoner cannot be convicted of receiving stolen goods and a verdict under such circumstances will be quashed on writ of error. *Laurent & Regina*, 1 Q. B. R. 302, Q. B., 1881.

340. The prisoners were indicted for assault with intent to rob. The jury found a verdict of assault. A motion in arrest of judgment on the part of the prisoners on the ground that under the indictment they could not be convicted of common assault was rejected and they were sentenced to three months gaol at hard labor. *Regina & O'Neil*, 8 Q. L. R. 3, Q. B. 1881.

#### XXXVI. WRIT OF ERROR.

341. On the hearing of a writ of error, the plaintiff in error should be personally before the Court, and if he is confined, should be brought up on *habeas corpus*. *Laurent & Regina*, 1 Q. B. R., 302 Q. B. 1881.

### CRIMINAL LUNATICS.

I. IMPERIAL ACT RESPECTING THE REMOVAL OF FROM HER MAJESTY'S POSSESSIONS OUT OF THE UNITED KINGDOM, *see* C. 48-49, p. IV.

### CROWN

I. LAW OFFICES OF *see* C. 48 VICT. CAP. 6.

II. LIABILITY OF FOR TAXES.

III. PRIVILEGE OF.

IV. PRIVILEGE OF FOR ARREARS OF LIFE RENT.

V. PROPERTY CONFISCATED TO *see* ESCHEATS.

#### II. LIABILITY OF FOR TAXES.

342. In an action before the Recorder's court of the city of Quebec the corporation of that city impleaded one L. for taxes and assessments, alleged to be duly imposed upon property of that gentleman. The attorney general on behalf of Her Majesty filed an intervention praying to be admitted to contest the right of the city of Quebec to recover taxes from L., inasmuch as the crown was his tenant and was by law exempt from municipal taxation. The corporation demurred and on the demurrer the intervention was dismissed by the Recorder. The attorney general then brought the question before the Superior Court by *certiorari*. On the *certiorari* it appeared that L. was proprietor and used the premises in question as a bonded warehouse, and it was contended for the crown that they were exempt under the words "all public buildings intended for the use of the civil government" in 23 Vic. Cap. 61. Sec. 58. *Held* that that under the circumstances related that the crown was not tenant, but even if it were it was not exempt as such under any of the statutes referred to from the payment of municipal taxes. *Corporation of Quebec & Leaycraft*, 7 Q. L. R. 56. S. C. 1881.

343. And *held* also that if it were so exempt that would not exempt the proprietor of the warehouse from payment of the corporation taxes. *Ibid*.

#### III. PRIVILEGES OF.

344. Art. 9 (1) of the Civil Code refers only to such rights and prerogatives of the Crown as are attributes of the sovereignty, and not to such rights as may be possessed equally by subjects. Hence Articles 1187 and 1188 (2) of the code apply to ordinary claims of the Crown, and compensation may be pleaded between a claim of the Crown for the price of land sold and a debt due by the Crown for salary. *Attorney General & Judah*, 7 L. N. 147, S. C., 1884.

#### IV. PRIVILEGE OF FOR ARREARS OF LIFE RENT.

345. In a distribution of a lot of land the

(1) No act of the legislature affects the rights or prerogatives of the Crown, unless they are included therein by special enactment. The rights of third parties, who are not specially mentioned in any such act, are likewise exempt from the effect thereof unless the act is public and general.

(2) 1187. When two persons are mutually debtor and creditor of each other, both debts are extinguished by compensation which takes place between them in the cases and manner hereinafter declared.

1188. Compensation takes place by the sole operation of law between debts which are equally liquidated and demandable, and have each for object a sum of money or a certain quantity of indeterminate things of the same kind and quality. So soon as the debts exist simultaneously, they are mutually extinguished in so far as their respective amounts correspond.

Crown was collocated for \$140, capital of a life rent which it had on the property, and \$226.80 arrears for 27 years. This was opposed by another hypothecary creditor on the ground that the Crown had no greater privilege than a subject, and could therefore only claim for five years. *Held* that while the Crown had a right to be paid the entire amount due as against the debtor of the arrears that it had no greater privilege than the individual, and the collocation must be reformed. *Banque Nationale & Davidson*, 8 Q. L. R. 319, S. C., 1881.

## CROWN LANDS.

I. ACT RESPECTING *See* C. 44 VIC. CAP. 16; C. 46 VIC. CAP. 17; C. 47 VIC. CAPS 25 & 26.

II. CANCELLATION OF LETTERS PATENT FOR FRAUD.

III. ERRORS IN THE DOMINION LAND ACT CORRECTED, C. 45 VIC. CAP. 27.

IV. LOCATION TICKET DOES NOT CONFER RIGHT TO MORTGAGE *see* HYPOTHEC.

V. MANAGEMENT OF *See* Q. 46 VIC. CAPS. 8 and 9.

VI. PROTECTION OF SETTLERS *See* Q. 45 VIC. CAP. 12.

VII. RELIEF OF SETTLERS THEREON.

VIII. RESERVE OF RIGHT OF WAY.

IX. RIGHTS OF LOCATEE.

X. SALE AND MANAGEMENT OF *See* Q. 45 VIC. CAP. 10.

II. CANCELLATION OF LETTERS PATENT FOR FRAUD, &c.

346. In a case pending before the court at Chicoutimi the attorney general of the province of Quebec intervened and prayed that the letters patent granting the lands in dispute be cancelled for fraud and error. *Held* that it is the duty of a person claiming letters patent of crown lands to communicate everything which may affect his right to receive them, and if he does not do so the letters patent will be set aside, even if he has done so some time previously but has neglected to call the attention of the officers to the facts again. *Attorney General & Morin*. 1 Q. B. R. 88. Q. B. 1880.

## VII. RELIEF OF SETTLERS THEREON.

It shall be lawful for the Lieutenant-Governor in Council upon the report of the Commissioner of Crown Lands, to grant upon such terms as he may be pleased to fix, the remission in whole or in part of the sums now due to the Crown in virtue of the act 38 Vict. Cap. 3. Q. 48 Vict. Cap. 33, Sect. 1.

A detailed statements of the remissions made under this act shall be submitted to the Legislature, during the first fifteen days of each session. Sec. 2.

## VIII. RESERVE OF RIGHT OF WAY.

347. In a concession of crown lands by letters patent the following reservation was made.—“And we do hereby expressly reserve to us, our heirs and successors, a right of making any number of public roads or high-ways of a breadth not exceeding one hundred feet, through any part of the said land and premises hereby granted, except such part whereon any dwelling houses or other houses or dwellings shall be erected.” *Held* that a Municipal Corporation had not the right under such clause to expropriate the whole of the land, without having first appointed persons to value it and that if the land was expropriated for the purposes indicated that the owner had a right to be indemnified according to the value of the land taken, notwithstanding the provisions of Art. 902, Municipal Code. (1) *Corporation du Comté de Dorchester et Collet*. 10 Q. L. R. 63. Q. B. 1884.

## IX. RIGHTS OF LOCATEE.

348. Action of damages for timber cut on two lots of land held by the plaintiff under an instrument in the nature of a sale from the crown dated the 29th August 1878. Defendant pleaded that the plaintiff had wholly failed to comply with the conditions of the sale in his favor, and that according to those conditions the plaintiff had no right to the timber on the said lots, and that if he were to pay for the timber to the plaintiff he would be exposed to pay for it a second time to the crown. *Held* that the location ticket of the plaintiff being virtually a sale conveying ownership he had a right to recover the value of timber cut by others upon the land, notwithstanding the condition that he should not cut the timber himself; and that even if the location ticket were a mere license of occupation, and did not convey ownership, the plaintiff being allowed by law to “maintain suits in law or equity against any wrong doer or trespasser as effectually as he could” “do under a patent from the crown” would still have a right to recover the value of the timber notwithstanding the said condition. *Dinan & Breakey*. 7 Q. L. R. 120. S. C. R. 1881.

## CURATOR

### I. AUTHORIZATION OF.

349. A curator to an interdict cannot institute an appeal, even from a judgment con-

(1) Every Municipal Council may, in complying with the provisions of this title, appropriate any land, required for the execution of works ordered by any by-law, *procès-verbal*, or other resolution within the scope of its jurisdiction.

cerning an alimentary allowance, until regularly authorized by a Judge or the Prothonotary on the advice of a family council. *Clermont & Francis* 6 L. N. 325 Q. B. 1883.

## CURATORSHIP.

- I. A MOTHER MAY BE CURATRIX.
- II. APPOINTMENT OF CURATOR.
- III. LIABILITY OF CURATOR TO ACCOUNT.
- IV. POWERS OF CURATOR.
- V. POWERS OF CURATOR TO DELAISSEMENT.
- VI. TERMINATION OF.

### I. A MOTHER CAN BE CURATRIX.

350. A mother may be appointed curatrix to her absent son and administer his estate. *Valiquette Exp.*, 7 L. N. 70, S. C. 1884.

### II. APPOINTMENT OF CURATORS.

351. Provisions of Art. 445 C. C. P. regarding orders or judgments rendered by the Prothonotary will not apply to the interdiction or appointment of a curator. *Clermont & Francis*, 12 R. L. 567, S. C., 1881.

### III. LIABILITY OF CURATOR ACCOUNT.

352. Where the curator to the estate of a testator pleaded to an action to account *inter alia* that by a former action still pending in the same Court, one of the defendants and a co-legatee with the plaintiff had made a demand for an account, in all respects similar to the present action, that the parties were the same, and the allegations and conclusions were the same, but did not plead that he had rendered an account in the former case, but but on the contrary, it was shown that the record in the former cause had been destroyed by fire in the burning of the Quebec Court House.—*Held* that he had no interest in raising such a question except as to costs which would be provided against. *Fraser & Pouliot*, 7 Q. L. R., 148, S. C., 1881.

### IV. POWERS OF CURATOR.

353. Opposition to the sale of a fief and seignior on the ground that the *rentes constituées* representing the *cens et rentes* of said seignior for 15 years, had been ceded and transferred to opposant by the seignior (deceased). Opposition contested by the curator to the vacant succession of the seignior, on the ground that the seignior was insolvent at the time of the transfer, who consequently was in fraud of the creditors. *Held* that the curator had no status to file such contestation, or to ask for the rescission of the transfer on such ground as it belonged to the creditors only. *Lamarche & Pausé*, 27 L. C. J. 347, Q. B. 1883.

### V. POWERS OF CURATOR TO DELAISSEMENT.

354. Opposition alleging that the defendant having been sued hypothecarily as the *détenteur actuel* of the lot of ground seized in this cause made a *délaissement* in due course of law, that the opposant was appointed Curator to the *délaissement* so made and that by reason of the premises the proceeding for the sale of the said lot on the part of the present plaintiff ought to have been taken against the opposant as curator to the *délaissement*, and not against the defendant who had made the *délaissement*. Plaintiff contested on the ground that it did not appear that the opposant was sworn as curator as well as other objections against the appointment of the defendant. *Held* that although the *délaissement* leaves the *delaissant* the right to resume the property at any time before the sale, on paying the plaintiff suing, and also the right to receive any surplus that the sale of the land may produce after the payment of the legal claims, yet that the *délaissement* cannot be considered a *légitime contradictoire* in any proceeding to bring the property to sale, and a creditor having a judgment against the *delaissant* ought to cause it to be declared executory against the curator before causing the real estate *delaissé* to be seized. *Couture & Fournier*, 7 Q. L. R. 27, S. C. R. 1880.

### VI. TERMINATION OF.

355. The functions of a curator to a *délaissement* cease *ipso facto* by the payment of the hypothecary debt, and no judgment to that effect is necessary. *Montcaiel & Ross & Trudel & Bouchard* 27 L. C. J. 218, S. C. 1883.

## CURÉ.

### I. RIGHTS OF.

356. Lorsqu'une partie d'une paroisse civile et canonique est, par décret de l'Evêque diocésain, dûment détachée et annexée à une paroisse voisine, la dime est due au curé de cette dernière qui peut la recouvrer en justice, nonobstant que, sur opposition des parties intéressées, les commissaires aient refusé d'ériger civilement cette nouvelle paroisse qui reste paroisse canonique seulement, et la dime est due pour la subsistance du curé à l'occasion des services spirituels qu'il est appelé et tenu de rendre aux fidèles mis par l'Evêque sous sa juridiction et non pour les services civils qu'il rend à l'Etat et que, par suite, c'est la paroisse canonique qui doit la dime. (1) *Ouimet vs Cadot*. 7 L. N. 415. C. C. 1884.

## CURRENCY.

### I. ACT RESPECTING *see* C. 44 VIC. CAP. 4.

(1) In appeal.

## CUSTODY.

I. OF ILLEGITIMATE CHILDREN, *see* CHILDREN.

## II. OF MINORS.

357. The mother of a minor of twelve years of age (the father being dead), is entitled to the charge of her child, unless it appears that she is disqualified by misconduct or is unable to provide for the child. *Ham Exp.* 6 L. N. 115, & 27 L. C. J. 127, Q. B., 1883.

358. But when it appeared that the mother was a domestic servant, and the child was well cared for by another, the Court before granting to the mother the custody of the child, required the production of affidavits showing that the mother was in a position to provide for the child's wants. *Id.*

## CUSTOM OF TRADE.

## I. PROOF OF.

359. A custom of trade to be binding must be uniform, universal, known, and consecrated by long usage. *Forest & Berenstein.* 8 Q. L. R. 262, S. C. R. 1882 and *Mac Gillivray* and *Parker*, 6 L. N. 308, S. C. 1883.

## CUSTOMS.

I. ACT AMENDED, *see* C. 44 Vict. Caps 10 & 11; C. 46 Vict. Caps. 12 & 13; C. 47 Vict., Caps. 29 & 30; C. 48-49 Vict. Cap. 61.

## II. LIABILITY FOR SEIZURE BY

360. Action under 1543 C. C. (1) to rescind a sale of 473 chests of tea. Sale was made at Toronto on the 5th February 1880, through a broker at Montreal, at 32½ cents per pound duty paid, delivered in Toronto; terms cash. The declaration alleged the receipt of the goods by defendant at Montreal and non-payment of the price. The action began with an attachment of the goods in July 1880. Plea that the goods were sold duty paid, and the duty was not paid, and the goods were seized on arrival in Montreal by the Customs Authorities, and the seizure was only discharged on the 6th April 1880; that meanwhile the defendants had resold the teas and being unable to deliver them by the breach of contract of plaintiff they lost profits on their sale, and were liable in damages for non-delivery, to the extent of \$835.-24, and asked that in the event of the teas being delivered to plaintiff, they should be made subject to defendants lien for that amount. *Held* maintaining the seizure, that there was no proof of any default on the part of plaintiff, and he could not be held responsible. If the Customs Authorities were to blame in the seizure, defendants had their recourse against them. *Lambe & Hartland* 4 L. N. 138, S. C. 1881.

(1) 1543. In the sale of moveable things, the right of dissolution, by reason of non-payment of the price, can only be exercised, while the things sold remain in the possession of the buyer, without prejudice to the seller's right of revendication as provided in the title of Privileges and Hypothecs.

# D

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## DAMAGES.

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## VIII. GROUNDS OF.

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## X. LIABILITY FOR ACTS COMMITTED BY MINORS AND PERSONS UNDER CONTROL.

## XI. LIABILITY OF MASTERS.

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## XIV. PROSPECTIVE.

## I. AGAINST.

1. *Carrier*.—In an action against the proprietor of a ferry boat for the loss of a horse entrusted for carriage caused by injuries sustained on board. *Held* that the ferryman was liable as a common carrier, and the burden of proof was on him to show exemption. *Robert & Laurin*, 26 L. C. J. 378, S. C. R. 1882.

2. *Corporations*.—Plaintiff alleged that on the 3rd November 1878, while driving in a carriage over Craig street, in Montreal, the right wheel suddenly sank into the earth to a depth of 15 to 18 inches, producing such a violent shock as to break the carriage and throw the plaintiff into the street. The horse ran away and was so much injured that it died. The defendants pleaded that they had never been notified that there was any defect in the said street, and that the plaintiff's carriage was defective and had already been repaired. The facts alleged by the plaintiff were proved, and the defendants

proved a defect or flaw in the axle of plaintiff's carriage consisting in a defective welding of the iron which was unknown to plaintiff, and not readily discoverable. *Held* that the defendants were liable. *Archambault & City of Montreal*, 25 L. C. J. 225, S. C. R. 1879.

3. *Employers*.—Action of damage for an injury to plaintiff by pieces of metal falling from the roof of a house upon his head through the negligence of one of defendants workmen, while making repairs to the roof. Defendant tendered \$50. *Held* that the employer was responsible for the negligence of his workman, and the amount was a question of evidence. Damages assessed at \$100. *Vandal & Prowse*, 4 L. N. 2, S. C. 1880.

4. *Railways*.—Case of *Wilson & G. T. R.* (II. Dig. 236, 18) reversed in Q. B. 5 L. N. 88 & 2 Q. B. R. 131 & Su. Ct 1883.

5. *Telegraph Companies*.—In an action of damages against a Telegraph Company for the non-delivery of a message. *Held* that the condition on the form of a Telegraph Company, declaring that the Company is not liable for mistakes in transmission and even for non delivery of a message, if not repeated, is a reasonable one, and having been signed by the sender, he is bound by it; and that such a company is not subject to the same rules as common carriers. *Clarence Gold Mining Co. & Montreal Telegraph Co.* 8 Q. L. R. 94, C. C. 1881.

## II. COMPENSATION OF.

6. Where in an action of damages for slander it appeared that the plaintiff had also called the defendant names the injury was said to be compensated and the action was dismissed. *Coutu & Lefevre*, 7 L. N. 111, S. C. R. 1884.

## III. CONTRIBUTORY NEGLIGENCE.

7. Action against a farrier for the loss of a valuable horse which was injured while being shod in the premises of the defendant. The horse was in charge of the plaintiff's groom, and being restive and troublesome, the groom struck it with a whip which he had in his hand. The horse thereupon backed up suddenly, and one of his hind feet went down an opening between the end of the flooring and the wall which was just large enough to allow it to press through, but closed on it and would not allow it to come back. In the struggles which the horse made to free itself it was injured so that it had to be shot. *Held* that while the farrier was bound to have his premises in proper condition, the groom had in this case contributed to the accident by striking the horse, so that the plaintiff could not recover. Action dismissed each party paying his own costs. *Allan & Mullin*, 4 L. N. 387, S. C., 1881.

8. In an action by an employee against his employer for injury suffered in the course of his employment.—*Held* that where the employee

has done only what most other people would do, he is not in fault, and not guilty of contributory negligence. *Cossette & Leduc*, 6 L. N., 181, S. C. R., 1883.

9. Where a collision occurred between two vehicles and both drivers were in fault, but it appeared that the accident nevertheless might have been averted by ordinary care on the part of the one who did not stop when requested, the latter was held liable in mitigated damages. *Therien & Morrice*, 6 L. N. 110, S. C., 1883.

#### IV. COSTS IN CASES OF.

10. Where judgment for \$1.00 damages and costs is rendered, that means \$1.00 also for costs. *Laurence & Hubert*, 12 R. L. 109, S. C., 1883.

#### V. DISCRETION OF APPEAL COURT TO INTERFERE WITH.

11. In an action of damages for personal injury, the Court of first instance awarded \$3000. In appeal the amount was reduced to \$600, and the plaintiff condemned to pay all the costs of appeal (1). In the Supreme Court *Held* that inasmuch as the damages awarded were not of such an excessive character as to show that the judge who tried the case had been influenced by improper motives or led into error the amount so awarded by him ought not to be reduced. *Gingras & Desilets*, 4 L. N., 91, and *Levi & Reed*, 4 L. N., 92, & 6 S. C., Rep. 482, Su. Ct., 1881.

#### VI. EXEMPT FROM SEIZURE.

12. Where the defendant had in an action of damages for libel, been awarded \$50, and this amount was attached in the hand of the person condemned, it was held to be unseizable, and the attachment was set aside. *Maurice & Desrosiers*, 7 L. N. 264, & 361, & 12 R. L. 654, C. C., 1884.

#### VII. FOR.

13. *Accidents*.—Action of damages in consequence of an accident caused to the Plaintiff by the neglect to cover and surround with a railing an excavation made in the public street, opposite the defendant's property, and to put up a light at the spot. The defendants pleaded and proved that the work was done under contract, and that the defendants had no control over the contractor. The plaintiff proved that the permit from the Corporation to made the excavation was granted to the defendants, and on condition of their protecting the public against accident. *Held*, that notwithstanding the excavation was made by a contractor over whom the defendants had

no control that the defendants were responsible. *McRobie & Shuter*, 25 L. C. J. 103 S. C., 1880.

14. Where a cask of sirup was broken while passing over the quay from the steamboat, and the sirup lost after delivery to an employee of the plaintiff. *Held*, that the steamboat owner was not liable. *Leclerc & Gaherty*, 7 Q. L. R. 30, C. C., 1880.

15. Action of damages for personal injuries. The plaintiff had entered the yard of the company defendant and was proceeding to the office in search of employment when an empty barrel weighing some sixty or seventy pounds was thrown out of an upper window of the factory and struck him on the body, throwing him down and breaking his left shoulder blade and his sixth rib. He was in bed three weeks under the care of a doctor. The defendants without admitting liability tendered three hundred dollars and costs. The medical testimony was to the effect that his efficiency as a carpenter, which was his occupation, had been lessened. *Held*, that the defendants were undoubtedly liable and damages estimated at \$500.00, of which \$180.00 was for exemplary damages. *Leroux & Victor Hudon Cotton Co.*, 4 L. N. 46, S. C. & 118 S. C. R., 1881.

16. Plaintiff, was in the employ of the defendants, biscuit manufacturers, and while engaged in such employment, his hand was caught between two rollers, belonging to the machinery used for making biscuits, by which two of his fingers were permanently injured. *Held*, that a workman who is injured in the course of an employment, which becomes dangerous only by carelessness and want of proper attention, has no right to damages from his master, especially if he is acquainted with the working of the machinery and could be injured only by his own imprudence. *Sarault & Viau*, 11 R. L. 217, S. C., 1881.

17. Action of damages for an accident caused by an alleged obstruction in the street by which the plaintiff was thrown out of a cart and injured. The city called in the contractors as *garants*, and these pleaded negligence on the part of the man driving the cart. The contractors had a quantity of material in the street by permission of the city with a stipulation to have a light there. The evidence as to contributory negligence on the part of the driver was contradictory, but it was proved that there was a pile of stone and timber in the street, that the accident was caused thereby, and that there was no light placed there by the contractors and the evening was dark. The material might have been enclosed with a fence, and a light might have been placed there. *Held*, that the city and contractors should answer in damages. Damages assessed at \$250 for which judgment against the city, and *en garantie* against the contractors. *Diotte & the City of Montreal*, 4 L. N. 243, S. C., 1881.

18. Action against the City for \$5000 damages. It appeared that on the 10th February

(1) II Dig. 247-79.

1879, about six o'clock in the evening while plaintiff was going home from work along the northwest side of Notre-Dame Street he struck his foot against a lump of snow or ice on the sidewalk, and fell with great violence to the ground. The accident was not attributed to any carelessness on the part of plaintiff but was caused by dangerous accumulation of ice or snow on the sidewalk. The fall caused a fracture of the thigh, and the plaintiff who was 66 years of age was permanently injured thereby. Damages allowed \$2000. *Dillon & City of Montreal*. 4. L. N. 300, S. C., 1881.

19. The plaintiff while driving over a railway crossing by a street in the suburbs of Montreal was struck by a passing train and injured. *Held* that he was bound to use caution in crossing the track at an hour when the trains were usually passing, and the company not being guilty of negligence or omission of the customary warnings the plaintiff was not entitled to damages for injuries sustained. *Roy & The Grand Trunk Railway Company*. 4. L. N. 211, S. C., 1881.

20. Le demandeur déclare qu'il avait loué une stalle pour son cheval le dimanche dans l'étable de A. S. Le défendeur en avait aussi loué une voisine de celle du demandeur du côté nord. La stalle du côté sud voisine de celle du demandeur n'était pas louée. Le 26 Décembre le défendeur est venu avec deux chevaux en a mis un dans sa stalle louée et l'autre dans la stalle non-louée. Après la messe le cheval du demandeur avait la jambe gauche de derrière cassée par les ruades du cheval du défendeur mis dans la stalle du sud et on fut obligé de tuer le cheval blessé. Jugé que le défendeur ayant mis son cheval sans permission dans une stalle non louée voisine de celle du demandeur était responsable de la perte du cheval du demandeur vu que évidemment par l'aspect et la position de la blessure c'était le cheval du défendeur qui avait fait le dommage quoique personne ne l'eût vu faire. *Bérubé & Ouellet*. 4. L. N. 343. 1881.

21. A shutter from an upper story slipped off its hinge while the defendants servant was opening it, and falling on the plaintiff injured her so that she was unable to work for five weeks. *Held* that although there was no gross negligence on the part of the servant her employer was responsible as it was his duty to see that the shutter was hung so as to avoid such accidents. *Goulet & Stafford*. 4. L. N. 357. S. C., 1881.

22. Action arising out of an accident which occurred while the cargo of the "South Tyne", consisting of railway iron, was being discharged in the port of Montreal, in May, 1880. The appellants were stevedores, and were employed in the unloading of the vessel. G. the respondent, and a fellow-workman named A. were engaged by them, and while the unloading was proceeding during the night, one of the chains by which the rails were raised through the hatch gave way,

and the rails fell upon the respondent and his fellow-workman, breaking a leg of each. G. sued for \$2,000 damages, and by the judgment of the Court below he was allowed \$400. Appeal by the defendants from this judgment.—*Held* reversing this judgment and dismissing the action, that where the damage results from an accident without fault on either side the loss is borne by the party who suffers it; and when the suffering party alone is in fault the loss is borne by him. *Desroches & Gauthier*, 5 L. N. 404, Q. B. 1882.

23. Action of damages for injuries suffered from the defendant who was driving a horse at a rapid rate, and came in contact with the plaintiff's carriage, in which the latter was driving with his wife—the accident bringing on a miscarriage among other injuries, and the damages being laid in all at \$1,000. *Held* that the owner of a horse is not responsible for the damage caused by the animal while running away, if he proves that the accident occurred without any fault or imprudence on the part of the person in charge thereof. *Gougeon & Contant* 5 L. N. 182, S. C. 1882.

24. Where it was proved that the sidewalk was usually kept in excellent condition, and the influence of the weather at the time of the accident was specially unfavorable, the action of a person who slipped and sustained injury was dismissed. (1) *Lulham & City of Montreal*, 6 L. N. 93, S. C. 1883.

25. Where a horse was found dead near the railway track, and there was no evidence as to how he was killed, but it was proved that the fence adjoining the track was in good condition, and it appeared that people passing through the gate in the fence often left it open; *Held* that the company was not liable. *Lambert & Grand Trunk Railway Co.* 6 L. N. 43 S. C. 1883.

26. A railway company is not responsible for animals straying and trespassing on its track. *Jasmin & Canadian Pacific Railway Co.* 6, L. N. 163, C. C., 1883.

27. Action of damages to recover the value of a horse alleged to have been drowned through the negligence of the municipality in not having a proper railing in a dangerous part of the highway. The action was dismissed. In Review, the municipality was held liable on the evidence and action maintained for value of the horse. *Hébert & La Corporation de la paroisse de Ste-Martine*, 6 L. N. 106, S. C. R., 1883.

28. Action of damages by the widow of a man killed on the wharf, at Montreal, against the master of the steamer *Harold*, which was leaving the port, and in swinging around snapped her stern hawser, breaking both of deceased's legs, and so seriously injuring him that he died in consequence at the General Hospital within two or three days. The deceased was a young man of about thirty three, in excellent health, and left a widow

[1] Confirmed in appeal.

and five children without support. He was at the time earning \$14 per week as a checker on the wharf, which gave him employment for about seven months in the year. Judgment for \$6,000 (1). *Byrd & Corner*, 6 L. N. 364, S. C., 1883.

29. A municipal corporation is liable for damages suffered by a person, owing to the defective condition of the streets, without proof that it had notice of the defects which led to the accident. *Beauchemin & La Corporation de St. Jean*, 6 L. N. 357, S. C. R., 1883.

30. Where an accident occurred on the track of the Montreal City Passenger Railway Company, and it was proved that the rail was laid as required by the charter of the Company, and that the railway at the time of the accident was in good order. Held that the plaintiff could not recover for an accident caused by the wheel of the vehicle catching on the raised part of the rail (1). *Montreal City Passenger Ry & Parker*, and *Montreal City Passenger Ry & Montreal Brewing Co.*, 7 L. N., 194, Q. B. 1884.

31. Defendant was driving in a dog cart on Charbonneau street, between St. Dominique and St. Lawrence streets. He had a heavy load consisting of seven persons, that is four women, two children and himself. Turning the corner he met plaintiff's child between four and five years of age, which was crossing the street and it was knocked down by the cart breaking his thigh. The child was taken to the hospital where it remained in bed under treatment for six weeks. The defendant said it was a fortuitous event, that he was not driving fast and that the child ran between the horse's legs. The evidence was contradictory, there was proof that at the time the accident occurred the defendant's head was turned from his horse to enable him to converse with one of the women. He then exclaimed: "My God, I have run over a child." Held that there was carelessness on the part of the defendant and judgment for damages \$126. *McBride vs. Bocage*, S. C. 1884.

32. The plaintiff went one evening in August 1883 to walk in the Frontenac Terrace, Quebec. Just as the music finished he left the stand where the band was, carrying his child in his hands and walking on the grass of the garden, slipped on the pavement of the terrace, when he fell into an opening which led to an underground passage under the terrace. He was considerably injured and was for several days under the care of a doctor. The opening was without a fence or protection of any kind. Held that the corporation were liable. *Brault vs. La Corporation de Québec* 10. Q. L. R., 291, S. C. R., 1884.

33. *Assault*.—Judgment allowing \$20 damages in a small case for assault committed during a St. Jean-Baptiste celebration. *Poirier & Monette*. 7 L. N. 71, S. C. R., 1884.

34. Appellant was proprietor of an hotel in the City of Montreal and respondent a practising advocate there. One evening the latter went into the washroom of the hotel, and the proprietor alleging that he saw him throw some paper about which stood in a basket spoke angrily to him. Some words ensued which ended in the proprietor ordering him out, and the latter was on the point of going out, when a porter took him by the collar and pushed him towards the door. The respondent was not a guest of the hotel. On action of damages he was allowed \$15 and costs of action as brought; and in appeal the judgment was confirmed but without costs on the ground that the respondents proper recourse was before the Police Magistrate for the assault, and the Court below should not have allowed him full costs. *Hogan & Dorion* 2 Q. B. R., 238. Q. B., 1882.

35. *Being struck off voters list in error*. The plaintiff complained that in the year 1880 or 1881, although he had paid his taxes, no credit was given to him in the books of the Corporation, and a bailiff came down to his place of business and annoyed him a good deal; and further that his name was stricken from the list of voters. Action for a large amount of damages. *Per Curiam*.—The Court cannot commend the practice of suing for large amounts of damages in cases where there is often great difficulty in determining whether there is any right to recover even a dollar; it increases the costs enormously. The plaintiff here has made out a right of action. He has proved no special damage; but for the deprivation of his right of citizenship and of his vote as such, he is entitled to recover something. Judgment for \$30 and costs of the lowest class Superior Court action. *Martin & The City of Montreal*. 6 L. N. 23, S. C., 1882.

36. *Bite of dog*.—Where an employé is bitten by a ferocious dog of his master, which is allowed to go at large, without any provocation by the employé the master is liable in damages, notwithstanding such employé has been warned of the disposition of the dog and that he should try and avoid him. *Aupriz & Lafleur*, 15 L. C. J. 251, S. C. R., 1880.

37. *Breach of promise of marriage*.—No action will lie for breach of a mere promise to marry where no damage is shown to have resulted and the defendant has acted in good faith in refusing. *Chamberland & Parent*, 8 Q. L. R. 299, S. C., 1882.

38. *Default to furnish debentures*.—The respondents set up that on the 12th June 1872 the defendants passed a by-law authorizing them to take stock in the railway to the amount of \$200,000 and pay the same in bonds and debentures. On the 9th July 1872, the by-law was adopted by the electors and by 36 Vic., cap. 49, was declared valid. Under

1(1) In Appeal, reduced to \$2,500, and leave to appeal to Privy Council granted.

(1) Reversed in Supreme Court in both cases and damages allowed, and appeal to Privy Council refused.

this by-law the Mayor of the Council subscribed on the following among other conditions: "The amount should be payable in debentures of \$100 each payable in 25 years. The subscription was only exigible as the work progressed, not to exceed 50 per cent of the value of the work done; payments to be made monthly as the work progressed on the certificate of the company's engineer." The plaintiffs alleged further that conformably to the by-law they commenced the works and in the March 1875 had constructed to the value of more than \$300,000 on a length of fifty miles in the county of Ottawa, that this gave the company the right to claim \$150,000 payable in debentures, that the plaintiffs were ready to terminate the works on condition that defendants should fulfil the condition of the by-law; that defendants failed to pay to plaintiffs said debentures and caused damage to plaintiff by shaking their credit and depriving them of considerable sums of money which the plaintiffs would have a right to as well from the City of Montreal as from the Quebec Government. The Court below was of opinion (1) that although as a general rule in obligations limited to the payment of a sum of money, damages arising from delay in their fulfilment consist in a condemnation to pay interest, yet there may be cases in which a creditor is entitled to damages other than interest, and \$100 was allowed for the default of the defendants (appellants). *Held*, confirming the judgment, that the obligation to furnish debentures was different from an obligation to pay money, and the condemnation to damages was well founded. *Corporation of the County of Ottawa & La Cie. du chemin de fer M. O. & O.*, 6 L. N. 382, & 28 L. C. J. 29, Q. B., 1883.

39. And *held* also that notwithstanding Art. 1053, C. C., (1) that the French law and the law of this province recognized nominal and exemplary damages. *Ibid*.

40. *False affidavit*.—The appellant sued in the Commissioner's Court as tutor to the minors "M. P." and, condemned in this quality, sued out a writ of *Certiorari*, and in the affidavit of circumstances he declared: "qu'il n'était pas le tuteur des mineurs P. ainsi qu'allégué dans le dit jugement, et que la dite Cour des Commissaires, n'était autorisée et n'avait aucune juridiction pour rendre jugement de cette manière." The judge in the Superior Court, set aside the judgment of the Commissioners Court owing to this allegation of the affidavit of circumstances. The plaintiff before the Commissioner's Court (Respondent) sued Appellant in damages for this false statement, as he called it, and proved

(1) 26 L. C. J., 148.

(1) Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill. 1053 C. C.

as the measure of damages what he had lost by the setting aside of the judgment in the Commissioner's Court. *Held* that an action of damages will not lie against a party to a previous suit by his adversary, for an alleged false affidavit by which such party obtained a final judgment in his favor in the previous suit. The first judgment is *res judicata*. *Boisclair & Lalancette* 5 L. N. 267 & 1 Q. B. R. 289, & 27 L. C. J. 55, Q. B. 1881.

41. Le demandeur par son action réclama des dommages du défendeur parce que le 20 août 1877 sur la plainte d'un nommé Clément, le défendeur émana un *warrant* d'arrestation en vertu duquel il fut appréhendé et arrêté pour avoir "renvoyé le dit Clément de son service sans lui payer ses gages, etc." Sur procès devant le dit juge de paix, le demandeur fut condamné à payer la dette, les frais et un dollar d'amende. Le défendeur plaida qu'il avait agi avec bonne foi et dans les limites de sa juridiction. Que le demandeur, en ne faisant pas casser le jugement par un tribunal supérieur s'il était illégal, avait acquiescé au dit jugement, et que son action était prescrite par six mois. Jugé: Qu'un magistrat qui émane un *warrant* d'arrestation sans juridiction n'est pas responsable en dommages vis-à-vis la personne arrêtée en l'absence de preuve de malice et de mauvaise foi de la part du magistrat et qu'une action en dommages contre un magistrat pour un acte par lui fait en sa dite qualité se prescrit par six mois à compter de l'acte même. *Kinston & Corbeil*, 7 L. N. 325 S. C. R. 1879.

42. The judgment in Queen's Bench in *Shaw & Mackenzie*, which was reversed in Supreme Court. (II. Dig. 241-48,) reported in *extenso* 25 L. C. J. 40. Q. B. 1880.

43. The respondents were two sisters keeping a house of doubtful repute in which appellant lost a sum of money, on account of which he had the sisters arrested charged with having stolen it while he was under the influence of liquor. They were both discharged the one by the magistrate, the other by the grand jury. On action for false arrest \$20 and \$10 respectively was awarded with costs of the lowest class of the Superior Court. On appeal judgment confirmed. *Serrurier & Mercier*. 1 Q. B. R. 65. Q. B. 1880.

44. Action against the mayor of Montreal for causing the arrest of the plaintiff during the Orange Riots of 1878. Plaintiff was one of the leaders of the Orange body which had announced its determination to march on the 12th July. The lodges which had met for that purpose claimed protection during their march to and from church. Instead the Mayor ordered them not to walk, and to prevent their doing so caused the arrest of plaintiff, who was subsequently tried and acquitted on a charge of being a member of an illegal association. *Held* that there was probable cause for the arrest and no malice. *Grant & Beaudry* 4 L. N. 394, Q. B. 1881.

46. In an action of damages for *inter, alia*, malicious prosecution and false arrest it appearing that the plaintiff had also prosecuted the defendants criminally and there being no documentary proof of the prosecution of which he complained. *Held* that the prosecution by the plaintiff could be set off against the prosecution by defendants and action dismissed. *Gadbois & Laforce*. 4 L. N. 244. S. C. 1881.

47. A trading firm by making false statements to a mercantile agency as to their capital obtained a high and incorrect rating, on the strength of which they got credit for goods which they handed over to a relative in payment of an antecedent debt, and within a month afterwards a writ in insolvency issued against them. The vendor of the goods on discovering the facts and being so advised by counsel, prosecuted the firm on a charge of obtaining goods by false pretences, but after a preliminary examination the prisoner was discharged. *Held* that there was reasonable and probable cause for the prosecution, and an action of damages would not lie. *Bowes & Ramsay*. 4. L. N. 227. S. C., 1881.

48. Action of damages against the City of Montreal and one of its policemen for illegal arrest and criminal prosecution. The City pleaded that it was not responsible for the acts of the policeman. The policeman pleaded that complaints of indecent exposure of his person by plaintiff had been made and he was arrested and indicted and a true bill found by the grand jury against him, and in the circumstances of the case there was probable cause for the arrest and prosecution. The proof showed that plaintiff had been arrested by order of the assistant sergeant of the Chaboillez police station on Saturday and confined until the following afternoon, Sunday, when he was released on bail. The following morning he was brought before the Recorder on a charge of indecently exposing his person, and after hearing witnesses the case was sent to the general Sessions of the peace. There was an indictment laid before the grand jury and a true bill found, and an acquittal by the petit jury. The arrest was made without a warrant. *Per Curiam*.—Do the circumstances entitle him to damages, and is the claim good against the City and against the policeman. The Vagrant Act 32-33 Vic. Cap 28 has been cited. It provides for the punishment of persons openly or indecently exposing their persons. So also the City Charter 14 and 15 Vic. Cap 128, Sec 87 makes it lawful for a constable of the police force to arrest on view any person offending against any of the laws rules and regulations of the City, the violation of which is punishable with imprisonment and it may and shall be lawful also for any such officer or constable to arrest any such offender against any such by law, rule or regulation immediately or very soon after the commission of the offence, upon good and satisfactory information given as to the na-

ture of the offence and the parties by whom committed. The Vagrant Act has no application to the present case. It does not provide for arrest without warrant after an interval of time following the offence. The city charter allows of the arrest of a person violating the city by-laws, rules and regulations immediately or very soon after the commission of the offence, but there is here no city by-law which has been violated so far as I have seen. The policeman was to blame for what he did without a warrant, and he should answer for it in damages, and the city should also answer for it in damages, and the city should also answer for him, for he acted on the order of his sergeant. The damages are assessed at \$50 and costs of an action over \$100. *Walker & City of Montreal*, 4 L. N. 215, S. C., 1881.

49. The appellants were appointed respectively joint tutors and subrogate tutors to a minor child, and respondent together with one A, presented a petition for their removal, to which they appended an affidavit of the facts contained in the petition. Appellants contending that the facts contained in the petition were false charged them with perjury and procured their arrest. They were however almost immediately discharged by the magistrate before whom they were brought. *Held* that the appellants had acted thoughtlessly, and without reasonable cause and were properly condemned in \$100 damages. *Beaumont & Lalonde*, 1 Q. B. R. 208, Q. B. 1881.

50. The warrant of arrest was issued at Sorel, in the district of Richelieu, and was executed by the plaintiff being seized at Contrecoeur, and carried to Sorel on a Sunday, the 31st of January, 1881. The hearing, at Sorel was put off till February when the complaint was dismissed for want of jurisdiction, the offence having been committed in Montreal district, if anywhere. \$100 damages allowed. *Leclaire & Copeland*, 5 L. N. 340, S. C. R., 1881.

51. The plaintiff was arrested by a policeman of the town of Longueuil for breaking down a fence erected by the corporation on a road belonging to them, but not yet open to the public but was afterwards liberated and discharged on the ground of a formal defect in the proceedings. *Held* that he was not entitled to damages for false arrest. *Town of Longueuil & Brats*. 11 R. L. 503. S. C. 1882. *Bariteau & Town of Longueuil*. *Ib*.

52. In another case plaintiff sued the defendant for damages, alleging that the defendant without provocation had beaten and ill used him and had caused him to be arrested and imprisoned and tried before a justice of the Peace. The proof was that the defendant had accused the plaintiff of assault and battery and had given instructions to a constable to go to his house at six o'clock in the morning and to take him dead or alive. Constable went at that hour in the morning with five or six others, forced himself into the bedroom of the plaintiff and arrested him, though he complained of being ill and took

him to a tavern when he was detained some time as a prisoner. The trial lasted some ten days during which there were six adjournments, and at the end of which the Justice of the Peace committed him to prison for trial. He was subsequently admitted to bail and after trial was acquitted. Damages to the extent of \$50 and costs of action as instituted were allowed. *Fraser & Gagnon*. 11 R. L. 517, Q. B. 1882.

53. The plaintiff complained of the defendants that they had illegally arrested him and caused his detention while they had a warrant prepared against him, and then compelled him to give security to appear on a subsequent day. It appeared in evidence that on the 15th January 1884, the plaintiff removed a barrier which had been placed by the corporation on a piece of land donated to the city, called the Quinn Avenue. There was a constable present to prevent people passing through, and he arrested plaintiff and conducted him to the police office, where a warrant was prepared, and he was bound over to appear at a future day. The proceedings then begun by the city were afterwards quashed. Plaintiff averred that he had a perfect right to remove the barrier and pass on to land which he had leased from the Quinn family. He alleged a previous verbal lease, and a written lease signed the afternoon of the arrest. The barrier had been erected to prevent plaintiff and others from evading the toll. *Held* that as the lease had been obtained evidently to give plaintiff a color of right he had suffered no damages and action properly dismissed. *Brais & Corporation of Longueuil*. 5 L. N. 212. S. C. R. 1882.

54. In another case the plaintiff executed a mortgage in favor of defendant and, on the faith of the representation that only one other mortgage existed on the property, the defendant made advances. The representation was untrue, the property being at the time mortgaged to its full value. The defendant caused the plaintiff to be prosecuted criminally. A bill was found, but the plaintiff was acquitted by the petit jury. *Held* that the defendant acted with probable cause. (1) *Grothé & Saunders*. 5 L. N. 213. S. C. 1882.

55. Le défendeur en sa qualité d'agent du Surintendant-Général des Affaires des Sauvages fit arrêter le demandeur pour avoir illégalement résidé sur la réserve de Caughnawaga. Le demandeur est un tailleur de pierres employé aux carrières depuis dix-huit mois, et qui logeait dans une maison de pension du village. Il avait reçu du député-surintendant un avis officiel d'avoir à quitter la réserve. Il fut conduit à Lachine, mais le constable qui l'avait arrêté, n'ayant pu trouver aucun juge de paix, le demandeur fut remis en liberté. Il retourna à Caughnawaga où il fut de nouveau arrêté pour la même cause un mois après, et condamné à la prison.

Après avoir été incarcéré huit jours, il fut

(1) Confirmed in Appeal.

remis en liberté sur un Bref d'*Habeas Corpus* et la conviction fut cassée sur *Certiorari*, à cause de certaines irrégularités dans le mandat d'arrestation et dans la conviction. *Jugé*—Qu'un officier public qui fait arrêter une personne qui est en contravention avec la loi n'est pas responsable des irrégularités qui se trouvent dans la conviction, et dans le mandat d'emprisonnement, lorsque le prisonnier est libéré sur un bref d'*Habeas Corpus* et la conviction cassée sur un *Certiorari*. *Laflleur & Cherrier*, 5 L. N. 411 S. C. 1882.

56. Three workmen had been employed by a Dr. T (who, in right of his wife, was co-proprietor along with the defendants in the two present cases, of some real estate in this city) to pull down a building. They were all three arrested at the instance of the defendants and brought before a magistrate, who discharged them, on a charge of unlawfully doing damage to property, and they then, each of them, brought an action for damages laid at \$210. *Per Curiam*—The first case came before the Hon. Justice Sicotte, and he gave judgment for the plaintiff with \$25 damages, and costs as in the lowest class of action in this Court. In the present two cases, which were heard before me, the counsel for the defendant contended there was no evidence to show the workmen had authority from T; but the fact is alleged by the defendant himself in his protest served upon these workmen, that Mrs. T. was causing a portion of the property to be pulled down—i. e., that the men were working then by order of one of the co-proprietors. The defendant knew what these men were doing there; and the charge he brought against them was without cause, and under a mere color of law. It was also contended that in the event of damages the costs should be those of the Circuit Court, but that would be in effect to punish these men for the exercise of their right of action. I adhere to the judgment given in the other case, and in these two I give \$25 damages and costs as in lowest class action in this Court. *Dufresne & Ross & Lauzon & Ross*, 6 L. N. 22, S. C. 1882.

57. The plaintiff, who was a grocer, sent out two men to deliver goods in the village of St. Gabriel. A constable in the village thought these men were intruders, doing business without a licence. He accordingly arrested them and they were taken away and detained for some time. Finally they were released. *Held* (following *Doolan & The Corporation*) that the plaintiff was entitled to damages & \$50 and costs allowed. *Bruchesi & Corporation of St. Gabriel*, 6 L. N. 60, S. C. 1882.

58. Defendant held liable in damages for having induced the plaintiff to go across the international line, and for causing him to be arrested in Vermont for an alleged debt which it appeared did not exist and \$250 and costs allowed. *Woodard & Butterfield*. 6 L. N. 228. S. C. 1883.

59. In an action of damages for false arrest

under *capias*. *Held*—that the fact that the debtor is leaving the province is not of itself evidence of an intent to defraud, but the affidavit for *capias* must contain reasons sufficient to satisfy the Court that the plaintiff had reasonable and probable cause to believe that the debtor was actually about to leave with a fraudulent intent without which the defendant is entitled to damages. *Brosseau & Seybold*. 6 L. N. 389. S. C. 1883.

60. The plaintiff was arrested on a *capias*, on the ground that he had refused to make any settlement of his debt; that he was about to sell his estate and to leave the country. It appeared that the plaintiff had called a meeting of his creditors and informed them of the proposed sale, to which the majority of those present agreed. *Held* that there was not probable cause. *Marchand & Snowden*. 7 L. N. 44. S. C. 1884.

61. Where the Corporation for the purpose of making a test case, caused a carter to be arrested and detained several hours instead of proceeding by summons, damages to the extent of \$50 were allowed. *Richer & City of Montreal*. 7 L. N. 79. S. C. 1884.

62. The defendants bought up some debts and caused the arrest of the plaintiff under a *capias* for the purpose of detaining his person and getting possession of certain papers. *Held*, an abuse of the process of the Court, and that exemplary damages should be awarded. *Gerbic & Bessette*. 7 L. N. 156. S. C. 1884. (1)

63. Action of damages by a married woman separated as to property from and authorized by her husband for malicious criminal prosecution. The defendant filed an exception *à la forme*, 1, because no intelligible cause of action was set forth in the declaration; 2, because it did not appear in the declaration, how the female plaintiff was separated as to property whether judicially, or by ante-nuptial contract. *Held* that it is not necessary, in an action for malicious criminal prosecution to allege that the justices before whom the plaintiff was brought had jurisdiction. It is, however, essential to aver that the prosecution complained of has been terminated. *Prosser & Creighton*. 7 L. N. 104. S. C. 1884.

64. The plaintiff was defendant in a cause in which the Sheriff had seized land which he had been unable to sell for want of bidders. Some months afterwards the defendant bought a small quantity of wood off this land from plaintiff for the price of \$3. He cut the wood and was then threatened with proceedings for contempt in the case in which plaintiff was defendant, at the suit of the plaintiff. Alarmed, he and his brother, similarly situated and threatened, paid the lawyer of the plaintiff in the other suit \$25 each. They then turned round upon T. and threatened him with criminal proceedings on the charge that the sum of \$3, paid by them to Turcotte, had been obtained from them by

false pretences. They endeavored to obtain a cow and horse from his father in settlement, and, failing, lodged an information which led to an indictment and trial before a petit jury in the Court of Queen's Bench. *Held* malicious and \$75 damages and costs allowed. *Turcotte & Brisette*. 7 L. N. 276. Q. B. 1884.

65. A sum of \$1200 in bills of \$20 and \$50 of the Jacques Cartier Bank had been stolen from a lawyers office in Montreal. Notice had been given to the police and amongst others to defendants to be on the watch. On the morning of the arrest the plaintiff accompanied by others in the garb of workmen entered the Jacques Cartier Bank in Montreal and asked for change of bills of \$20 and \$50 of that bank. Shortly afterwards they were arrested, and having given a perfectly satisfactory account of themselves were liberated. *Held* there was probable cause for their arrest and no damage. *Lebel & Paradis*. 4 L. N. 403., S. C. 1881.

66. The defendants convicted the plaintiff of assault and had imposed a fine and the payment of costs without fixing in the conviction the term of imprisonment due in case the fine or costs were not paid. Subsequently the fine not being paid they awarded imprisonment and he was incarcerated under their warrant but got out under a writ of *habeas corpus*. On action against the magistrates *Held* that a magistrate acting within the limit of his authority and without malice is not liable to an action of trespass, though he may have given an erroneous judgment. *Roy & Page*. 5 L. N. 32. S. C. R. 1881.

67. A partner, leaving the business of the firm unsettled, departed to the United States, taking with him several hundred dollars belonging to the partnership. *Held* that there was probable cause for an attachment at the instance of the remaining partner, of the partnership effects, and an action of damages for such seizure should not be maintained. *Chapman & Benallack*. 5 L. N. 109, S. C. and 198. S. C. R. 1881.

68. Action for a wrongful and malicious attachment of the goods and chattels of the plaintiff. The affidavit for the attachment complained of, after alleging the cause of debt was in the following terms: "*Que la dite E. D. est commerçante notoirement insolvable, refuse de s'arranger avec ses créanciers et de leur faire cession à eux et à leur profit et continue son commerce. Que le dit déposant est informé d'une manière croyable à toute rais n de croire, et croit vraiment en sa conscience que la dite E. D., est sur le point de receller ses biens dettes et effets avec l'intention de frauder ses créanciers ou nommément le déposant, demandeur, et que sans le bénéfice d'un bref de saisie-arrêt simple, le déposant perdra sa dette et souffrira des dommages et a signé.*" The first of the questions for the jury was as to whether the defendant at the time of taking the said proceedings against the plaintiff by *saisie-arrêt* had reason-

(1) In appeal.



able and probable cause for believing and making oath that the said plaintiff was immediately about to secrete her estate, debts and effects, with intention to defraud her creditors and the defendant in particular. The second was at to whether at the same time the plaintiff was immediately about to secrete her estate, debts and effects, with intent to defraud her creditors and the defendant in particular. The third question was, did the said defendant, in issuing the said writ of *saisi-arret* simple against the plaintiff, act maliciously, and without reasonable or probable cause. And the fourth, did the plaintiff suffer any and what damage by reason of the issuing and execution of the said writ? The Jury answered the first two questions in the negative; the second two they answered in the affirmative, and assessed the damages at \$800. On a motion for judgment *non obstante veredicto* or for a new trial.—*Held* that the plaintiff was as much bound to disprove the first charge in the affidavit, that the plaintiff although insolvent was continuing to carry on her trade &c, as she was to disprove the second about the fraudulent secreting, and that the first charge contained in the affidavit, remaining as it did unimpeached, justified the issuing and execution of the attachment. Motion for new trial granted. *Drolet & Garneau*. 10 Q. L. R. 139. S. C. R. 1884.

69. *Infringement of patent*.—Actual, and not exemplary damages, will be award for imitating a patented invention. 35 Vic. c. 26, s. 23. (1) *Lainer & Collette*. 5 L. N. 412. S. C. 1882. (2)

70. *Insulting conduct*.—Persons performing a voluntary and gratuitous service such as the collection of the offertory in a church, will not be permitted to make use of his office to offend and humiliate a member of the congregation, and an action of damages will lie for such offence. A wilful and marked omission to present the plate to a member of the congregation, was held to be an offence for which an action lay. *Lebeau & Turcotte*, 7 L. N. 259, S. C. 1884.

71. *Libel*.—Action by a professional accountant for \$5000, damages for a libel committed by the defendant in a letter written by him to the chairman of an insurance company and to the mayor of the city, charging the plaintiff with having in his professional capacity as accountant made a false and fraudulent balance sheet in connection with the estate bequeathed by one Fraser for the

purposes of a public institute. Defendant pleaded the bequest, the incorporation of the institute, and that as a citizen he was interested in seeing the benevolence carried out. That in writing the letter he had no intention of injuring the plaintiff, but had merely wished to point out certain irregularities in the books of the estate which the plaintiff should have discovered. *Held* that the term "public accountant" did not mean a person amenable to public criticism, and as there was no proof of the truth of the matters alleged in the letter the defendant was liable in damage, and \$50 and full costs awarded. *Evans & Fraser*, 4 L. N. 51, S. C. and S. C. R. 1881.

72. Where a newspaper during an election for the legislature of Quebec copied a paper or circular used during the campaign in which it was stated that the plaintiff, one of the candidates, had declined to run for Portneuf because he had made so many enemies there by not paying his debts of the previous election, and these statements were not proved. *Held* to be libellous and \$50. and costs allowed. *Belleau & Mercier*, 8 Q. L. R. 312, S. C. 1882.

73. Where the plaintiff was a young unmarried woman of good character, and the defendant in the privacy of her own family had called her *une putain* some year or two previously \$50 damages and costs were allowed. *Denis & Theoret*, 5 L. N. 163, S. C. 1882.

74. *Registration of illegal hypothec*.—A person who illegally causes the registration of a hypothec against the property of another is liable for the damages caused thereby. *Daigneault & Demers*. 26 L. C. J. 126. S. C. 1881.

75. *Seduction*.—Damages can only be recovered for seduction on proof of a promise of marriage, or of facts which raise a presumption of such a promise; and where the plaintiff had cohabited with the defendant for three or four years on his assurance that there was no danger, and that he would marry her should she become *enceinte*, the presumption of a promise of marriage was altogether destroyed, the agreement if any being a corrupt one and opposed to public morality, and that in consequence she was entitled to nothing beyond her *frais de gesine*. *Turcotte & Nacké*. 7 Q. L. R. 230. S. C. R. 1881.

76. *Selling liquor to drunkards*.—In an action for damages against an hotel keeper brought in virtue of the statute of Quebec, 41 Vic. Cap. 3, for selling liquor to the plaintiff husband after notice.—*Held* that as the plaintiff's had not alleged in her declaration that defendant knew her husband at the time the liquor was sold, or that he was the person indicated in the notice which the plaintiff gave him, that the action must be dismissed. *Desjardins & Girard*. 28 L. C. J. 177. S. C. 1884.

77. *Shooting dogs*.—Action of damages by a farmer against his neighbor for shooting his dogs and firing shots into his building.

(1) Every person who without the consent in writing of the patentee, makes, constructs, or puts into practice, any invention for which a patent has been obtained, under this Act or any previous Act, or procures such invention from any person not authorized to use or make it by the patentee, and uses it, shall be liable to the patentee in an action of damages for so doing, and the judgment shall be enforced, and the damages and costs that may be adjudged, shall be recovered in like manner as in other cases in the Court in which the action is brought.

(2) In appeal.

Evidence that defendant killed the dogs. *Held* that although they had been trespassing he had no right to take the law into his own hands and \$60 damages in all allowed. *Trenholm & Mills*. 4 L. N. 79. S. C. 1881.

78. *Unfounded action*. — An action for damages will arise from an action which has been dismissed as unfounded. *Poutré & Lasure*. 12 R. L. 465. Q. B. 1865.

#### VIII. GROUNDS OF.

79. In April 1883, plaintiff became insane and on the 16th of that month, he was placed in Longue Point Asylum, where he remained for about a month. He was not married, but his mother and sister, with whom he lived, notified the defendant who was one of the largest creditors. The defendant caused the stock taking which the plaintiff had commenced to be completed and which showed that the liabilities exceeded the assets, and that the plaintiff was practically insolvent. The defendant took possession of the stock, advertised it for sale by tender and sold it, taking promissory notes in payment of the amount which after payment of the expenses was distributed among the creditors according to their rights; the fixtures in the store were abandoned to the landlord on account of his rent overdue. When the plaintiff left the asylum he was not perfectly recovered and notwithstanding that he was considerably better, he was very much affected when he found that his business had been wound up. He then sued the defendant for \$7,000 damages. Plea that he had been authorized by the mother and sister of the plaintiff to do what he had done, and that he had done it in the interest of the plaintiff himself and his creditors. In January following, the plaintiff was again placed in the Asylum, and was again liberated after spending about a month there. *Held* that the defendant had acted in good faith, and for the interest of the parties and was not liable in damages. *Martin & Grenier*, 12 R. L. 604, S. C. 1884.

#### IX. JOINT AND SEVERAL LIABILITY FOR.

80. Action of damages against a Justice of the Peace for having caused the arrest of the plaintiff and his prosecution before the Recorder's Court, where the accusation was declared unfounded. Plea that the defendant was only jointly and severally responsible with the police agent who made the arrest, and plaintiff had settled the matter with him for four dollars. *Held* that two or more persons committing a *délit* were jointly and severally responsible, and a settlement with one discharged the others. *Giroux & Blais*, 7 Q. L. R. 309, C. C. 1881.

#### X. LIABILITY FOR ACTS COMMITTED BY MINORS AND PERSONS UNDER CONTROL.

81. An employer or parent is responsible

for a trespass committed by his children or by persons employed by him or under his control where he fails to establish that he was unable to prevent the act. *Gravel & Hughes*, 7 L. N. 32, S. C. 1883.

#### XI. LIABILITY OF MASTERS.

82. Action to recover damages for injury done to the plaintiff's horse by the defendants' servant, in a collision of two sleighs, one driven for plaintiff by one M., the other driven by A. C., the servant of the defendants. The defendants were condemned to pay \$110. *Held* that the rule which makes a master responsible for the negligence of his servant, does not apply where the servant at the time is absent from service, and is engaged about his own affairs. *Bellhouse & Laviolette*, 7 L. N. 84, S. C. R. 1884.

#### XII. PLACE OF ACTION WHEN FOR BREACH OF CONTRACT.

83. Where the action is in damages for failure to perform a contract, the debtor may be sued at the place where the contract is made, though the failure to perform occurred in another district. *Quebec Steamship Co. & Morgan*, 6 L. N. 324, Q. B. 1883.

#### XIII. PRESCRIPTION OF.

84. To an action of damages for the construction and operation of a railway in the streets of the City of Quebec the defendant pleaded among other things the prescription of six months under the railway Act since the construction. *Held* that as the damage was continuing and permanent no prescription could run or be set up in bar of the plaintiff's right of action. *Renaud & La Corporation de Québec*, 8 Q. L. R. 103, S. C. 1881.

85. In an action of damages for libel. — *Held* that the prescription of one year as to libel, contained in a pleading, runs only from the date of the final judgment. *Hall & the Mayor of Montreal*. 6 L. N. 155 & 27 L. C. J. 129, Q. B. 1883.

#### XIV. PROSPECTIVE.

86. Where an action for damages for personal injury caused by an accident was taken a few days after the occurrence the Court discharged the *délibéré* in order that the plaintiff might file an incidental demand, as otherwise the Court could only render judgment for such damages as had actually accrued at the time of the institution of the action. *Goulet & Stafford* 4 L. N. 357, S. C. 1881.

#### DATION EN PAIEMENT

##### I. WHAT IS.

87. Action in revendication of a manuscript

entitled "L'Oeuvre de Terre Sainte" which the plaintiff claimed had been sent to him by le Rév. Père F. in consideration of work done on a former manuscript by Père F. never completed. The work was sent to defendant to be handed to plaintiff, but instead of delivering it, defendant sold it to one L. for publication. Plaintiff proved his right and the consideration alleged, and the only questions which arose were as to the delivery and acceptance. *Held* that the transfer by Père F. was a *dation en paiement* which was an onerous contract, not subject to the formalities required for a donation pure and simple; and that in any case, its arrival in the hands of the mandatory to be given to plaintiff, was a sufficient delivery. *Drouin & Provancher*. 9 Q. L. R. 179, S. C. R. 1883.

## DEATH.

### I. DAMAGES FOR WHEN CAUSED BY ACCIDENT OR NEGLIGENCE.

#### II. OF ATTORNEYS.

### I. DAMAGES FOR WHEN CAUSED BY ACCIDENT OR NEGLIGENCE.

88. Action of damages by the widow of a man killed on the wharf at Montreal against the master of the steamer *Harold* which was leaving the port and in swinging around snapped her stern hawser, breaking both of deceased legs and so seriously injuring him that he died in consequence, at the general hospital within two or three days. The deceased was a young man of about thirty three years, in excellent health, and left a widow and five children without support. He was at the time earning \$14 per week, as a checker on the wharf, which gave him employment for about 7 months in the year. Judgment for \$6,000. (1) *Byrd & Corner*. 6 L. N. 364. S. C. 1883.

#### II. OF ATTORNEYS.

89. Where a case was inscribed in review, and the party inscribing died before hearing, a motion to stay proceedings until the instance would be taken, was granted. *Rice & Libby*, 4 L. N. 350. S. C. R. 1881.

## DEBATS DE COMPTE, *see* ACTION EN REDDITION.

## DEBENTURES.

### I. DAMAGES FOR DEFAULT TO GIVE.

#### II. INTEREST ON COUPONS.

#### III. OF LATE PROVINCE OF CANADA.

(1) Reduced to \$2,500 in appeal, and carried to Privy Council.

### I. DAMAGES FOR DEFAULT TO GIVE.

90. The failure to pay money at the proper time can only give rise to the immediate and direct damages resulting therefrom, which are limited by law to the legal interest on the sum. But an obligation to give debentures bearing interest is not to be treated as a mere obligation to pay money, and nominal damages may be allowed for default without proof of actual damages. (1) *Corporation of the County of Ottawa and Cie. du chemin de fer M. O. & O.* 6 L. N. 382. Q. B. 1883.

### II. INTEREST ON COUPONS.

91. Interest runs on the Interest Coupons of railway debentures, from the dates, on which they respectively fall due, without the necessity of putting the debtor *en demeure*. *Desrosiers & The Montreal, Portland & Boston Railway Company*, 28 L. C. J., 6 L. N. 388, S. C. R., 1883.

### III. OF LATE PROVINCE OF CANADA.

92. The respondents by petition of right, before the Exchequer Court, set forth in substance: that the late Province of Canada, raised by way of loan, a sum of £30,000 for the improvement of Provincial highways, situate on the North Shore of the River St. Lawrence, in the neighbourhood of the City of Quebec; and a further sum of £40,000 for the improvements of like highways on the South Shore of the River St. Lawrence; that there were issued debentures, for both of said loans, signed by the Quebec Turnpike Road Trustees, under the authority of an Act of Parliament of the Province of Canada, 16 Vic., Cap. 235, intitled: "An Act to authorize the Trustees of the Quebec Turnpike Roads to issue debentures to a certain amount and to place certain roads under their control," that the moneys so borrowed, came into the hands of Her Majesty, and were expended in the improvements of the highways in the said act mentioned: that no tolls or rates were ever imposed or levied on the persons passing over the roads improved by means of the said loan of £30,000; that the tolls and loans, improved by means of the said loan of £40,000 were never applied to the payment of the debentures issued for the last mentioned loan in interest or principal; that the trustees accounted to Her Majesty, as well for the said loans as for the tolls collected by them; that at no time had there ever been a fund in the hands of the said trustees, adequate to the payment in interest and principal of the debentures issued for said loans; that the respondents are holders of debentures for both of the said loans to an amount of \$90,072, upon which interest is due from the 1st July 1872, that the debentures, so held by them, fell due after the Union, and that Her Majesty is liable for the same under Sec. 111 of the British North America Act,

(1) In Supreme Court.

1867, as debts of the late Province of Canada, existing at the Union. In defence, Her Majesty's Attorney General did not deny the liability of Her Majesty for the late Province of Canada, but he denied that the debentures in question were debentures of the Province of Canada; that the moneys for which they were issued were borrowed and received by Her Majesty, and that there was any undertaking or obligation on the Province of Canada to pay the whole or any part of the said debentures. *Held*, affirming the judgment of the Exchequer Court, that the debentures in question were debentures of the late Province of Canada, and therefore under the provisions of the British North America Act, the Dominion of Canada was liable, but for the capital only of the said debentures, it being provided by Cap. 235, Sec. 7, that no money should be advanced out of provincial funds, for the payment of the interest. (1) *Regina & Belleau*, 4 L. N. 92 & 7. S. C. Rep. 53, Su. Ct., 1880.

## DECLARATION—See PROCEDURE.

### I. AMENDMENT OF, *see* PLEADING.

## DECONFITURE. *See* INSOLVENCY.

### I. WHAT CONSTITUTES.

93. In order to prove insolvency or deconfiture, it must be shown that the assets of the debtor are less than his liabilities. *Mantha & Simard*, 6 L. N. 195, S. C., 1883.

## DEEDS.

### I. ACT TO RENDER VALID IN CERTAIN CASES.

#### II. SIMULATED.

### III. SOUS SEING PRIVÉ.

### I. ACT TO RENDER VALID IN CERTAIN CASES.

1. Deeds so passed since the coming into force of the said statute 42-43 Vict. Chap. 35, up to this day, in any part of the Province, are, to all intents and purposes, declared valid, provided that the notaries, passing such deeds, were not incapacitated otherwise than above mentioned, that this act shall not have the effect of shielding them from the penalties incurred by reason of their contravention of the above mentioned acts, and that it in no manner affects pending cases and vested rights of third parties. 45 Vict. cap. 31.

#### II. SIMULATED.

94. Simulation is a disguising of the truth; a deed is simulated which does not contain a

(1) Reversed in P. C. 5 L. N. 242, P. C., 1882.

sincere expression of the real intention of the parties. So, where a property worth about \$1,260 was sold to a man of straw (who did not take possession) for a consideration stated in the deed to be \$3,650, and two of the instalments amounting to \$2,000 were afterwards transferred by the vendor to a creditor in payment of goods, the Court declared the deed to be a simulated one, and set it aside so far as concerned the creditor. *Walker & Black*, 5 L. N. 415, S. C., 1882, and 8 L. N. 68, Q. B. 1885. (1)

### III. SOUS SEING PRIVÉ.

95. *Effect of*.—The plaintiff having judgment against the defendants seized in the hands of the *tiers saisi* who declared to owe nothing. This the plaintiff contested on the ground that the *tiers saisi* leased from the defendant and paid him \$15 per month rental. The *tiers saisi* replied that he had a lease from the defendant but by private agreement the rent was to be paid to another who had accepted. Demurred to on the ground that being a private writing it had not the quality required to give effect to it as against third parties under Art. 1225 C. C. (1) The *tiers saisi* on the other hand pretended that under 1222 C. C. (2) the creditor was not a third party into the sense of Art. 1225. The court maintained the contestation of plaintiff and the declaration of the *tiers saisi* was set aside. *Evans & Lionais*, 4 L. N. 110, S. C. 1881.

## DEFAMATION OF CHARACTER— See LIBEL AND SLANDER.

## DEFAULT.

### I. IN OBLIGATIONS.

### II. TO PAY MONEY—See DAMAGES.

### I. IN OBLIGATIONS.

96. A lessor is not liable to damages, owing to the bad state of the premises, unless regularly put in default, and where the deed is

(1) Confirmed also in Supreme Court but unreported.

(2.) Private writings have no date against third persons but from the time of their registration, or from the death of one of the subscribing parties or witnesses, or from the day that the substance of the writing has been set forth in an authentic instrument, the date may nevertheless be established against third persons by legal proof. 1225 C. C.

(3.) Private writings acknowledged by the party against whom they are set up, or legally held to be acknowledged or proved, have the same effect in making proof between the parties thereto, and between their heirs and legal representatives, as authentic writings. 1222 C. C.

notarial, the notice must be in writing. *Marcil & Mathieu*, 7 L. N. 55, S. C. 1883.

97. The defendant undertook to return a certain number of shares in a railway before a day stated, or to pay an amount in money, the shares were not returned. *Held* that the contract being of a commercial nature, the debtor was put in default, by the lapse of the time of performance. *Geoffrion & Senécal*, 6 L. N. 201, S. C. 1883.

98. By the act creating Normal Schools, it is provided that a certain number of scholarships may be established for the assistance of students, with the stipulation that the money should be returned, if the student refused or neglected to teach when called upon to do so. The defendant was sued for \$64, amount of two years scholarships given to his son, on the ground that the son had always refused to teach when required to do so. *Held* that the action must be dismissed for want of proof that the son had even been put in default to teach. *Principal of Jacques Cartier Normal School & Poissant*, 12 R. L. 177, S. C. 1883.

## DEFENSE EN DROIT.

### I. WHEN PLEADED.

99. Defendants pleaded a *défense en droit* to a count charging them with conspiring to ruin him by putting him into bankruptcy on the ground that the day and place were not given. *Held* no ground of demurrer (even if necessary), but rather of exception to the form. *Demers & Lamarche*, 4 L. N. 54, S. C. 1881.

## DELAISSEMENT.

### I. POWERS OF CURATOR TO, *see* CURATOR.

### II. TERMINATION OF CURATORSHIP TO, *see* CURATORSHIP.

## DELAYS.

### I. IN CASES OF INJUNCTION, *see* INJUNCTION.

### II. TO CONTEST CAHIER DE CHARGE.

### III. TO CONTEST INTERVENTION.

### IV. TO FILE PRELIMINARY PLEAS, *see* PROCEDURE.

### V. TO PLEAD, *see* PROCEDURE.

### II. TO CONTEST CAHIER DE CHARGE.

100. Action in licitation. In accordance with the judgment the immoveables were advertised for sale. In the *cahier de charges* one of the properties was advertised to be sold, subject to the charges contained in the

deed of donation, under which the plaintiffs and the defendants derived their title. One P. to whom the defendant had given several mortgages failed to file within the delay allowed him an opposition of contestation, concluding for the dismissal of the opposition. Appellant replied by a general and a special answer, which respondents demurred to on the ground that it was not an answer to their contestation, but an answer to their intervention and as such came too late as the intervention by the expiring of the eight days delay allowed for its contestation, had been admitted and could not, afterwards, be contested, the opposant thereafter having only the right to join issue with the intervening parties on their *moyens* of contestation, but having no further right to contest, setting forth his claim and without in any way referring to the incumbrances already existing upon it and created by the deed of donation produced two days only before the day appointed for the sale, an intervention contesting the secured claims mentioned in the *cahier de charges*. Motion to reject the intervention as too late, granted with costs. *Savard & Savard*. 8 Q. L. R. 287. S. C. 1881.

### III. TO CONTEST INTERVENTION.

101. The corporation of the city of Quebec, having a judgment, against one N. L. issued an execution against him, under which they seized, as belonging to him, an immoveable property duly described in the proceedings. On the 6th December 1880, the appellant filed an opposition *afin de charge*, claiming to have certain rights over and upon the property seized. On the 21st of December, the respondents filed an intervention for the purpose of contesting the opposition. On the 7th January following respondents produced their *moyens* of intervention. *Held*, setting aside the judgment of the Superior Court which maintained the demurrer, that the meaning of Art. 158 C. C. P. (1) was that after the lapse of eight days, the intervenant was admitted a party to the case, but the contestant is not precluded from pleading without some act of foreclosure. *Derome & Robitaille*. 8 Q. L. R. 60. Q. B. 1881.

## DELEGATION OF PAYMENT *See* PAYMENT.

(1) If the demand in intervention is served within the delay prescribed, the parties to the suit are bound to answer it within eight days after such service in default of which the intervention is held, thence forward to be admitted by the parties who have not contested it. The intervening parties is bound within eight days from the admission of his intervention to furnish any grounds he may have to set up in the principal suit. The subsequent proceeding, are the same as in an ordinary suit. 158 C. C. P.

## DELITS.

I. RECIPROCITY OF, CANNOT BE PLEADED IN ACTION OF SEPARATION DE CORPS.

102. Action for *separation de corps*, with forfeiture of matrimonial rights, by husband, charging wife's adultery. The cause came up on an answer in law to a portion of defendant's plea, which set up neglect, misconduct and ill treatment by plaintiff. *Per curiam*.—The case of *Brennan & McAnnanly*, (1) appears to be in point that a reciprocity of wrong is no answer to the action. Answer in law maintained. *Lefevre & Belle*, 4 L. N. 298, S. C. 1881.

## DELIVERY.

- I. UNDER DONATION *see* DONATION.
- II. IN SALE *see* SALE.

DEMANDE INCIDENTE.—*See* INCIDENTAL DEMAND, PLEADING IN ACTION PRO SOCIO.

DEMEURE *see* DEFAULT.

## " DE MINIMIS. "

- I. DISCRETION OF COURT IN REGARD TO

103. The appellant was taxed as a witness in the sum of \$6.50, and at the expiration of fifteen days took execution against respondent for the amount. The execution which issued in the case in which appellant was examined as a witness cost \$3.50 more. The respondent opposed on the ground that the execution should have been as in an action for \$6.50 and should have only have costs 30 cents, and that in any case there was an error of ten cents excess. In the Superior Court the opposition was dismissed. In review it was maintained and the seizure set aside. *Held* in appeal that the opposition was properly dismissed in the first place as frivolous, vexatious, and for an insignificant amount and the court had discretion so to decide. *Côté & Samson*, 8 Q. L. R. 357, Q. B. 1882.

DEMOLITION DE NOUVEL ŒUVRE  
—*See* SERVITUDES, WATER COURSES.

(1) *Dig.* 589, 101.

## DEMURRAGE.

- I. RIGHT TO, *see* AFFREIGHTMENT.

DEMURRER—*See* PLEADING.

- I. COSTS ON, *see* COSTS.

## DENTAL ASSOCIATION.

I. ACT AMENDING, *see* Q. 46 VIOL., CAP. 34, AND Q. 47 VIOL., CAP. 24.

## DEPOSIT.

- I. AT SHERIFF'S SALE.
- II. FOR COSTS IN REVIEW, *see* REVIEW.
- III. RIGHT OF BANKS OVER, *see* BANKS.

- I. AT SHERIFF'S SALE.

104. The defendant's property, moveable and immoveable, was seized in execution of a judgment, for about \$129, including costs. On the 9th December following, another writ also against moveables and immoveables, was placed in the Sheriff's hands in execution of a judgment for \$2048, including costs. The moveables were sold and realized within \$2.60 of the whole amount due the plaintiff. The Sheriff, however, in conformity with Articles 642 & 643 (1) of the Code of Procedure, continued his proceedings against the immoveables, and on the 7th April, they were sold to two different persons, whom the defendant had procured to buy in the property for him, but neither of whom ever paid the price of his adjudication. On the 5th of June, the Court granted two motions of the plaintiff, asking orders for the resale of the property for false bidding "*suivant l'usage et la pratique de cette Cour*," and thereupon two writs of *Venditioni exponas* were issued on the 25th June,

(1) When the sheriff has seized an immoveable, upon a defendant, he cannot seize it again at the suit of another creditor, or of the same creditor for another debt, as long as the first seizure subsists; but he is bound to note any subsequent writ of execution as an opposition for payment upon the first writ; and in such case, the first seizure cannot be abandoned, except in consequence of opposition, applicable, as well to the seizing creditor, as to those whose writ of execution have been noted as oppositions or with their consent, or by an order of a judge. 642 C. C. P.

In the event of the seizing creditor abandoning the seizure or receiving payment of his claim, the sheriff is bound to continue the proceeding in the name of the seizing creditor and at the cost of the judgment creditors, whose writs have been noted, in order to satisfy the claims specified in the subsequent writs of execution, provided the seizure was made with all requisites formalities. 643 C. C. P.

1879, ordering the Sheriff to proceed "according to law," to the resale of the property at the *folle enchère* of the parties. Subsequently to the issuing of these writs, the plaintiff obtained, without previous notice to defendant, a judgment ordering the Sheriff to exact from the bidders at the resale, the deposit of a sum of money equal to the amount of costs due to the seizing party, upon the judgment and seizure. No mention was made of the writs of *Venditioni exponas*, nor in the advertisements, nor in the conditions of sale, which accompanied the Sheriff's return of the condition that bidders would be required to make a deposit before their bids would be received. A few persons were told by the bailiff, who made the announcement at the church door, that a deposit would probably be required, but no public notice was given to that effect, nor was there any notice whatever given to any one of the amount of the deposit, that would be required. At the sale, a deposit of \$200 was required, in the case of one property, and of \$150 in the other. On a petition by defendant to vacate the sales.—*Held*, maintaining the petition *en nullité* that the order for a deposit should have been published as one of the conditions of sale. *Robitaille & Drolet*, 7, Q. L. R. 67, S. C. R. 1881.

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DEPOSITIONS—See PROCEDURE.

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### DERNIER EQUIPEUR.

I. PRIVILEGE OF, *see* PRIVILEGE.

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DESAVEU—See DISAVOWAL.

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### DÉSERTION.

I. OF SERVICE, *see* MASTER & SERVANT.

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DESISTÉMENT—See PROCEDURE.

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### DESTITUTION.

I. ACTION EN, *see* ACTION.

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DILATORY EXCEPTION—See PROCEDURE.

I. COSTS OF, *see* COSTS.

DIME—See TITHES.

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### DIRECTORS.

I. POSITION & POWERS OF, *see* COMPANIES.

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### DIRECT TAXATION.

I. WHAT IS, *see* LEGISLATIVE AUTHORITY, *in matters of taxation*.

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### DISABILITIES OF CANDIDATES.

I. ACT TO REMOVE, *see* ELECTION LAW.

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### DISAVOWAL.

I. PROCEDURE IN CASES OF.

105. Where an action was dismissed and the plaintiff, on execution being issued by the attorneys *distrayants*, came in by opposition and disavowed all the proceedings.—*Held* that the opposition should have been contested by the attorney disavowed, and not by the *distrayants*, and the record was sent back for that purpose. *Sicotte & Brazeau*, 4 L. N. 350, S. C. R. 1881.

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DISCHARGE—See PAYMENT, RECEIPT.

1. OF HYPOTHEC *see* HYPOTHEC.

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DISCONTINUANCE—See PROCEDURE.

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### DISCRETION.

I. OF COURTS *see* COURTS.

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### DISCRIMINATION

I. IN MATTERS OF TAXES *see* MUNICIPAL CORPORATIONS POWERS OF.

## DISORDERLY HOUSES.

I. PROCEEDINGS FOR KEEPING CANNOT BE HAD IN THE RECORDER'S COURT UNDER SUMMARY TRIAL BY CONSENT ACT. *see* RECORDER'S COURT.

## DISSOLUTION

I. OF PARTNERSHIP *see* PARTNERSHIP  
II. OF SALE FOR NON PAYMENT OF PRICE *see* SALE.

DISTINCTION OF THINGS.—*See* OWNERSHIP, PROPERTY.

## DISTRIBUTION

I. CONTESTATION OF REPORT OF  
II. RIGHTS OF HYPOTHECARY CREDITORS.

## I. CONTESTATION OF REPORT OF

106. Opposant complained that by an error in the notice renewing a hypothec, he had not been collocated for the amount of his hypothecary claim. He asked that a new report of distribution be ordered. There was no doubt as to the facts, and the Court considered that he was entitled to the relief prayed for, under article 761 of the Code of Civil Procedure, which says that any party aggrieved by a judgment of distribution may seek redress by means of an appeal, or a petition in revocation, if there are grounds for it, whether he has appeared in the suit, or, his claim being mentioned in the certificate of hypothec, he has not appeared. The *requête* of the opposant would be granted, and a new judgment of distribution ordered, and the parties who had been collocated would be ordered to pay back the sums of money received. *Bank of Toronto vs. Vigneau*, S. C. 1882.

107. An application to inscribe *en faux* against the certificate of the prothonotary regarding the posting of a report of distribution will not be granted after the report has been homologated in favor of an opposant who knew of the *faux* complained of prior to the judgment homologating the report. *Pangman & Pauzé*, 27 L. C. J. 140, S. C. 1883.

108. Nor can a report be contested after it has been duly homologated even by authority of a judge. *Ibid.*

109. By a report of distribution, the petitioner who had not filed an opposition, but who was a duly registered hypothecary creditor was collocated for \$339.43. Her collocation was contested as fraudulent and unfounded by one C., who served his contestation at the office of the prothonotary. Petitioner was absent from the Province, and

Messrs. L. & L. having received reliable information that her claim was well founded put in an appearance and wrote to her for instructions. They addressed their letter to Worcester, Mass., where they had reason to believe she then resided, but her real residence, at the time, was at Marieville, Rhode Island. Not having received an answer to their letter, they felt they would not be justified in further opposing the contestation of C. and the result was that the collocation in favor of petitioner was set aside, she having failed to answer the interrogatories on *faits et articles* charging her with fraud, which interrogatories like the contestation, had been served at the office of the prothonotary. Held that the services of the contestation and of the interrogatories at the office of the Prothonotary were illegal, null and void, and that under the circumstances, petitioner was entitled to the *requête civile*. *Cooke v. Caron*, 10 Q. L. R. 152, S. C. R., 1884.

110. An action will not lie by a hypothecary creditor, who has not been collocated in a report of distribution for a claim against an immoveable mentioned in the registrar's certificate, to recover from a party alleged to have been illegally collocated by preference, the sum which plaintiff claims belonged of right to him. The recourse of a party aggrieved by a judgment of distribution is by appeal, or by petition in revocation, or by opposition to the judgment, as pointed out in Art. C. C. P., 761.(1) *McDonell & Buntin*, 27 L. C. J. 73, S. C. & 7 L. N. 130, Q. B. 1884.

## II. RIGHTS OF HYPOTHECARY CREDITORS.

111. It is not competent to hypothecary creditors, who have not been collocated in a report of distribution duly homologated, of the moneys arising from a sheriff's sale of the property hypothecated in their favor, to sue to recover from a party alleged to have been illegally collocated in such report, on the ground that according to the Registrar's certificate attached to the sheriff's return, such party ought not to have been so collocated, and that plaintiffs should have been collocated for the amount of their demand preferentially to him. *McDonell & Buntin*, 27 L. C. J. 73 S. C., 1883.

112. Where a hypothecary creditor who is first in rank, cedes his right of preference on the monies arising from the sale of a portion of the property hypothecated, in favor of a hypothecary creditor, who is only third in

(1.) Any party aggrieved by a judgment of distribution, may seek redress, by means of an appeal, or a petition in revocation, if there are grounds for it whether he has appeared in the suit, or his claim being mentioned in the certificate of hypothec, he has not appeared. Any creditor mentioned in the Registrar's certificate, who has not appeared in the cause may moreover, within fifteen days, seek redress by means of an opposition to the judgment.



rank, such creditor having first rank cannot afterwards claim to rank for his full claim (without deduction of the monies received under said sale), to the prejudice of a hypothecary creditor, who is second in rank, in the distribution of monies arising from the sale of the balance of said property. *Perron & Quintal*. 27 L. C. J. 74, S. C. R., 1882.

## DISTRICT MAGISTRATES.

I. ACT CONCERNING, *see* Q. 48 VICT., CAP. 15.

## DIVORCE.

I. EFFECT OF FOREIGN DIVORCES IN THIS PROVINCE, *see* MARRIAGE, EFFECT OF, &c.

113. The plaintiff and defendant were married in New-York in 1871, without ante nuptial contract, both being at the time domiciled in that city. By the laws of the Statutes of New-York, no community of property was created by such marriage, the wife retaining her private fortune free from marital control like a *femme sole*. Shortly after the marriage, the appellant entrusted the respondent, with the whole of her private fortune consisting of personalty to the amount of over \$200,000, and respondent administered this until 1876. The consorts lived in New-York until 1872, when they removed to Montreal, where the respondent has ever since resided and carried on business, but appellant left him shortly after to take up her residence, alternatively in Paris and New-York. In 1880, when respondent was still in Montreal, the appellant then in New-York, instituted proceedings against him for divorce, before the Supreme Court of New-York, on the ground of adultery. The action was served on respondent personally at Montreal, and he appeared in the suit but did not contest, and appellant obtained a decree of divorce absolutely in her favor in December, 1880. In 1881, appellant taking the quality of a divorced woman, and without obtaining judicial authorization, instituted an action against the respondent in the Supreme Court in Montreal, for an account of his administration of her property. The respondent pleaded that the alleged divorce was null and void for want of jurisdiction of the Supreme Court of New-York, that the appellant in consequence was still his wife, and that she should have obtained the authorization of the Court to institute the present action. *Held*, reversing the decision of the Queen's Bench, (6 L. N. 329 & 27 L. C. J. 228,) restoring that of the Superior Court, (5 L. N. 79,) that the Supreme Court of New-York had jurisdiction to pronounce the divorce, and the divorce was entitled to recognition in the Courts of the Province of Quebec. *Stevens & Fisk*, 8 L. N. 42, Su. Ct. 1885.

114. And that the Supreme Court of New-York, having under the statute law of New-York, jurisdiction on the subject matter in the suit for divorce, the appearance of the defendants in the suit absolutely and without protesting against the jurisdiction, stopped him from invoking the want of jurisdiction of the the said Court, in the present action. *Id.*

115. And that the plaintiff had at the institution of the action for divorce, a sufficient residence in New-York to entitle her to sue there (1). *Id.*

## DOCUMENTS OF TITLE.

### I. COVE RECEIPTS.

116. Appellant seized in the river St. Maurice as belonging to the St. Maurice Lumber Co. (defendants) 5892 pine logs. Respondants filed opposition *afin d'annuler* by which they claimed a lien on the logs in virtue of three writings *sous seing privé*, by which the St. Maurice Lumber Co. transferred the logs to respondents by way of pledge for advances. *Held* that banks cannot acquire a lien on logs under (2) the banking act 34 Vic. Cap. 5, S. S. 46 & 47 if the pledge of these logs was made for a previous indebtedness or if they were not held by virtue of a transfer, or a receipt of a cove keeper, or by the keeper of any wharf, yard, harbor or other place or of a specification of timber deposited in a cove, wharf, yard, harbor, warehouse, mill or other place in Canada within the meaning of the said act, and that to acquire a lien under arts. 1745, 1966 and 1967 C. C. (3) there must be an actual delivery or possession of the property pledged or of some document in use in the ordinary course of business entitling the bearer thereof to claim possession of such property. *Ross & Molson's Bank*, 2 Q. B. R. 82, Q. B. 1881.

(1) The American doctrine of allowing the wife to establish a separate forensic domicile in divorce cases was incidentally quoted and approved.

(2) For statute here referred to *see* BANKS.

(3) Bills of lading, warehousekeepers or wharfinger's receipts or orders for delivery of goods, bills of inspection of potash or pearlash and all other documents used in the ordinary course of business as proof of the possession or control of goods or purporting to authorize either by endorsement or delivery the possession of any such document to transfer or receive goods thereby represented are deemed documents of title within the provisions of this chapter. 1745 C. C.

Pledge is a contract by which a thing is placed in the hands of a creditor, or being already in his possession is retained by him with the owner's consent in security for his debt. The thing may be given either by the debtor or by a third person on his behalf. 1966 C. C.

117. The defendants paid for timber by means of their promissory note discounted by the Merchants' Bank, the bank taking as collateral security for the payment of the note, the cove receipt for such timber, endorsed by the defendants. Subsequently the note was paid with money advanced by the opposant. At the time the note was taken up, the Bank re-transferred the note to the defendants, who at once endorsed and delivered it to the opposant. The plaintiffs afterwards caused the timber to be seized under a judgment obtained against the defendants. The opposant filed an opposition to set aside the seizure claiming the timber under the cove receipt, and his opposition having been contested by the plaintiffs, it was held: That the cove receipt vested in the opposant the legal possession and control over the timber; and that, under article 553 C. C. P., (1) the seizure of the said timber, made by the plaintiffs in virtue of a judgment obtained by them against the defendants was illegal and null, considering that at the time the opposant was the holder of the said cove receipt. *Cook & Knight*, 9 Q. L. R. 203, S. C. 1883.

## DOGS.

I. LIABILITY FOR *See* MASTER AND SERVANT.

II. RIGHTS OF NEIGHBORS WITH REGARD TO.

118. Where a farmer had shot his neighbors dog for trespassing on his property. *Held* that he had no right to take the law into his own hands and would have to pay damages. *Trenholme & Mills*. 4. L. N. 79. S. C. 1881.

## DOL.

I. WHAT IS *See* SALE OBTAINED BY FRAUD and *See* SUCCESSION, ACCEPTANCE OF.

## DOMICILE.

I. ELECTION OF *See* OPPOSITION.

## DOMINION OF CANADA.

I. LIABILITY OF *See* PROVINCE OF CANADA.

(1) A creditor may cause to be seized in execution the moveable or immoveable property of his debtor in the possession of such debtor, or moveables of his in the possession either of such creditor himself, or of third persons, if the latter do not object, if they do, the creditor must adopt a seizure by garnishment. 558 C. C. P.

## DONATION.

I. CAUSIS MORTIS.

II. DELIVERY.

III. GROUNDS OF NULLITY IN.

IV. IN FRAUD OF CREDITORS.

V. LAPSED BY TIME.

VI. PAYABLE AFTER THE DEATH OF DONOR.

VII. RESILIATION OF.

VIII. VALIDITY OF.

I. CAUSA MORTIS.

119. A donation inter vivos of a sum of money for valuable consideration secured by hypothec, though payable only after the death of the donor, is not invalid as made *causa mortis*. *Newton & Cruise*. 6 L. N. 107. S. C. 1882.

II. DELIVERY

120. Where the parents of the plaintiff gave to one of her brothers, by deed of donation *entre vifs*, the property in dispute, but the brother, the donee, had been absent from the country ever since and the parents remained in possession until their death. *Held* that though they had by the deed of donation reserved to themselves a *droit d'habitation*, that that did not constitute a *tradition feinte* and such a donation prior to the code was null and of no effect. *Lesage & Prov-d'homme*, 26 L. C. J. 213, S. C. R. 1882.

121. Action in revendication of a manuscript entitled. "L'œuvre de terre sainte" which the plaintiff claimed had been sent to him as his own property by le Rev. Pere F. in consideration of work done on a former manuscript by Pere F. never completed. The work was sent from to defendant to be handed to plaintiff, but instead of delivering it the defendant sold it to one L. for publication. Plaintiff proved his right and the consideration alleged, and the only questions which arose were as to the delivery and acceptance. *Held* that the transfer by Pere F. to plaintiff was a *dation en paiement*, which was an onerous contract not subject to the formalities required for a donation pure and simple and that in any case its arrival in the hands of the mandatary to be given to plaintiff was a sufficient delivery. *Drouin & Provencher*, 9 Q. L. R., 179, S. C. R. 1883.

III. GROUNDS OF NULLITY IN.

122. To set aside a deed of donation executed under the power of attorney, given in London by the plaintiff in July, 1877, to a Mr. T., and acted upon during three years—when that gentleman acted under it, to execute a deed of donation from his principal to the defendant of all the principal's share in his father's estate—and this *à titre gratuit*. *Held* that the intent of the parties was not that there should be such gratuitous donation, but on the contrary that the donee should assume

the payment to the plaintiff of his, the plaintiff's share, in the succession of their late father and donation cancelled. *McCord & McCord*, 11 R. L. 510, & 5 L. N. 342, S. C. R. 1882.

#### IV. IN FRAUD OF CREDITORS.

123. A donation made by a father to his daughter, at time where he was perfectly solvent, but with a view to going into business and securing it against any debts he might contract, was set aside at the suit of the assignee of the donor after his insolvency, although the creditors represented by him were all subsequent to the donation. (1) *Murphy & Stewart*, 12 R. L. 501, Q. B. 1868.

124. In May 1876, plaintiff sold to defendant certain effects including a Brussels carpet, costing \$93, and an oil cloth \$26. On the 9th November of same year an action was instituted by the plaintiffs against the defendant for \$114, being balance due thereon and judgment rendered for the amount 12th December following. To a seizure of defendant's goods and chattels including the carpet and oil cloth the wife of defendant filed opposition based on her marriage contract by which the goods and effects in question were conveyed to her as a donation thereunder. The marriage contract was entered into the 18th of November 1876, or just nine days after the date of the action. Plaintiff contested the opposition on the ground that at the date of the marriage contract the defendant was utterly insolvent to the knowledge of the opposant for the purpose of defrauding the creditors of the defendant more particularly the plaintiff from whom the defendant had purchased the said carpet and oil cloth, forming part of the goods and chattels so given by the defendant to his wife, and now seized at the suit of the plaintiff. Seventeen days after the date of the marriage contract defendant made an assignment of his estate under the insolvent Act 1875. There was no evidence of bad faith on the part of the wife, the opposant. *Held* that under Art. 1034 Civil Code (1) the donation must be presumed to be fraudulent as regards the defendant. *Held* that although the wife was in good faith a donation under such circumstances is a gratuitous contract as much in favor of the donor as of the donee and must be set aside. Opposition dismissed. *Behan & Erickson*, 7 Q. L. R., 295 S. C. 1881.

125. And in another case of a similar character it appeared that the defendant by contract of marriage transferred all his property to his wife, nine days after action brought, but there was no assignment in insolvency and no allegation of insolvency in the

pleadings; the contract of marriage was nevertheless held to be made in fraud of plaintiff's rights and the opposition of the wife based thereon was dismissed. (1) *Holliday & Conscience*, S. C. 1884.

#### V. LAPSED BY TIME.

126. According to the law governing donations before the Code, a donation of land of which the donor remained in open and uninterrupted possession for upwards of 40 years, was held to have elapsed and to be of that effect. *Lesage & Prudhomme*, 11 R. L. 475, S. C. 1882.

#### VI. PAYABLE AFTER DEATH OF DONOR.

127. Question as to the validity of a donation in the following terms: "*Lequel a reconnu nu avoir fait donation, cédé et transporté gratuitement, à titre de donation, entre vifs irrévocable à E. G., son fils, cultivateur du même lieu, acceptant de la somme de quatre cents piastres courant, une fois payée à prendre sur tous ses biens, meubles et immeubles et les plus clairs et apparents qui se trouveront lui appartenir au jour de son décès jusqu'auquel temps il s'en est réservé l'usufruit et la jouissance à titre de constitut et précaire auquel jour du décès du dit donateur il veut et entend que le dit donateur soit saisi de la dite somme de quatre cents piastres sans être tenu d'en faire aucune demande en justice.*" *Held* to be invalid as a donation des biens à venir under Arts. 778 & 818 of the Civil Code (2). *Bourget & Guay*, 8 Q. L. R. 173, S. C. 1882.

#### VII. RESILIATION OF.

128. The plaintiff made a donation of certain moveable property to his daughter and son in law. The donation was made subject to certain onerous conditions equal to the value of the property, and created a substitution in favor of the children of the donor. This donation afterwards by agreement of the parties was resiliated. *Held* that the resiliation would not in ordinary cases affect the rights

(1) *Loranger*, J. unreported.

(2.) Present property only can be given by acts *inter vivos*. All gifts of future property by such acts are void as made in contemplation of death. Gifts comprising both present and future property are void as to the latter, but the cumulation does not render void the gift of the present property. The prohibition contained in this article does not extend to gifts made in a contract of marriage. 778 C. C. Fathers and mothers and other ascendant relations in general and even strangers, may in a contract of marriage give to the future consorts or to one of them, or to the children to be born of their marriage even with substitution the whole or a portion of their present property, or of the property they may leave at their death or of both together. 818 C. C.

(1) But per contra, see authorities cited at the bottom of the above report.

(1) A gratuitous contract is deemed to be made with intent to defraud if the debtor be insolvent at the time of making it. 1034 C. C.

of those in whose favor the substitution was created. But as a substitution can only be created by gratuitous title that the donation thus made by onerous title could be resiliated without the consent of the parties substituted. *Beaulieu & Hayward*, 10 Q. L. R. 275, S. C. R. 1884.

#### VIII. VALIDITY OF.

129. On the 28th June 1876, L. & al. sold to Mr T. a property for \$12,250, of which price \$3,789 were paid in cash. On 16th June 1879, E. T., daughter of M. T. married J. K. and in their contract of marriage, M. T. made a donation to his daughter E. T. of certain property of considerable value and remained with no other property than that sold him by L. & al. In July 1881 L. & al. brought an action to set aside the gift in question, claiming that the property sold by him having become so depreciated in value as to be insufficient to cover the claim for the balance remaining due to them and secured only by the property so sold, the gift in this marriage contract had reduced M. T. to a state of insolvency, and had been made in fraud of L. & al., and that at the time the gift was made, M. T. was notoriously insolvent. M. T. pleaded *inter alia*, denying the averments of insolvency, fraud or wrong doing. The only evidence of the value of the property still held by M. T. at the time of the donation, 16th June 1879, was the evidence of an auctioneer, who merely spoke of the value of the property in November 1881, and that of a real estate agent, who did not know in what condition the property was two years before, but stated that it was not worth more than \$6,000 in November 1881, adding that he considered property a little better now than it was two years before, although very little changed in price. *Held*, reversing the judgment of the court below that in order to obtain the revocation of the gift in question it was incumbent on the plaintiffs to prove the insolvency or deconfiture of the donor at the time of the donation, and that there was no proof in the case sufficient to show that the property remaining to the donor at the date of his donation was inadequate to pay the hypothecary claims with which it was charged. *Tracey & Liggett*, 28 L. C. J. 181, Su. Ct, 1883.

#### DOWER.

##### I. RIGHTS OF DOWAGER.

##### II. RIGHT TO

##### I. RIGHTS OF DOWAGER.

130. Where by her contract of marriage the appellant was given £1000 as dower prefix to be levied on all the property of the husband, and the latter died intestate and

without issue.—*Held* that she could before the promulgation of the Civil Code take her dower subsidiarily on property in the possession of her husband *grévé de substitution* in default of other available property in the husband's estate; and that preferably to the heirs substituted. *Morasse & Baby*, 7 Q. L. R. 162, Q. B., 1874.

#### II. RIGHT TO

131. Heirs joined in a deed of sale of an immoveable pertaining to the succession of their father. They afterwards claimed customary dower on an immoveable which had been disposed of by their father during his lifetime without the wife having renounced her dower thereon. *Held*, that this immoveable would have been subject to dower if the heirs had renounced the succession, but the fact that the heirs joined in the deed of sale first mentioned was equivalent to a declaration of their acceptance of the succession, and excluded their right to customary dower. *Belournay & Moquin*, 5. L. N. 327, and 2 Q. B. R. 187, Q. B. 1882.

#### DRAFTS—See BILLS OF EXCHANGE AND PROMISSORY NOTES.

#### DRAINS

##### I. ASSESSMENTS FOR See MUNICIPAL CORPORATIONS POWERS OF.

##### II. RIGHTS OF NEIGHBORING PROPRIETORS, WITH REGARD TO.

132. A proprietor who has obtained from his neighbour, permission to join his drain temporarily to that of the other should remove it again when called upon to do so and if he refuses, the other will have a right of action to compel him and to recover damages if any. *Deacon & Grace*, 11 R. L. 491 S. C. 1882.

#### DRINK.

##### I. DAMAGES FOR GIVING See DAMAGES.

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## II. ACT TO REMOVE CERTAIN DISABILITIES.

Whereas where candidates are found guilty of any illegal acts there is no provision of law by which

such candidates may be relieved from the penalties or the disabilities they may have incurred, even where extenuating circumstances exist, or were after the trial circumstances are brought to light so as to cast a doubt upon the proof against the candidates; and whereas owing to circumstances accompanying such election suits, from the coming into force of the Quebec election act it is only just and expedient to come to the assistance and improve the positions of candidates who have been convicted of illegal acts. Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. No judgment, order, or report, hitherto pronounced or made, shall hereafter have the effect of rendering a candidate unfit to be elected a member of the Legislative Assembly or incapable of being inscribed as an elector or hereafter voting at elections, or incapable of any office within the gift of the Crown or Governor General in the province. Q. 45 Vic. Cap. 6.

## III. ACTION FOR PENALTY UNDER.

1. Action to recover from the Mayor and Secretary Treasurer of the Municipality of the Parish of St. Joseph de Chambly the sum of \$200 each for alleged violation of the Quebec Election Act. The electoral list was to be in duplicate under Section 12, (1) one of which was to be kept in the archives of the municipality and the other to be transmitted to the Registrar of the Registration division in which was situated the municipality, within eight days following the day upon which such list should have come into force by the secretary treasurer or by the mayor, under a penalty of \$200, or of imprisonment of six months in default of payment against each of them in case of contravention of this provision. It was charged against the mayor and secretary treasurer, that in 1880, they had omitted to transmit to the registrar within the eight days required, the duplicate in question whereby the penalty of two hundred dollars against each was incurred. Demurrer on the ground that it did not followed that the defendants were liable to the penalty by non-transmission of the duplicate list, because they had the right of transmitting with the same effect the copy mentioned in section 39, and it was not alleged that they had not transmitted such copy. *Held* incumbent on the plaintiff to *aver* not only that the duplicate referred to in section 38 had not been transmitted, but that the copy mentioned in section 39 had not been transmitted. *Tavernier & Robert*, 4 L. N. 131. S. C., 1881.

2. In an action under the Election Contested Act, in which several penalties for

(1) The secretary treasurer of each municipality shall, between the first and fifteen days of the month of March, in each year, make in duplicate, a list in alphabetical order, of all persons, who accordingly to the valuation roll, then in force in the municipality for local purposes, and as revised, if it has been revised, even for local purposes, appear to be electors, by reason of the real estate, possessed or occupied by them within the municipality, Q. 38 Vic., Cap. 7, Sec. 12.

demands and fines were joined. *Held* that a deposit of \$50 for each penalty demanded should be made. *Choquette & Hebert*, 10 Q. L. R. 192. Q. B., 1884.

## IV. AGENCY.

3. On the trial of an election petition—*Held* that a candidate at an election is responsible for the acts of agents who are not and would not necessarily be agents under the common law of agency. *Massé & Robillard*, 4 L. N. 3. S. C. R., 1880.

4. On the trial of an election petition—*held* that agency must result from an authorization express or implied, and proof of an implied authorization must relate to the particular fact which forms the subject of the authorization. *Mercier & Amyot*, 8 Q. L. R. 33. S. C., 1881.

5. And moreover presumptions of implied authorization are fully rebutted by direct proof that the candidate openly had in good faith forbid the person charged as agent to meddle in the election. *Ib.*

6. In an election case it was proved that one T. was the respondent's general agent for that part of the country and that A. was specially requested and given money by T. and induced by him to advance money to employ a certain number of men without specifying any particular persons to be so employed for the alleged purpose of preserving the public peace on polling day. It was not in evidence that T. had applied to the proper authorities or otherwise complied with the law in order to secure the peaceful conduct of the election. To the persons in question, who were all electors, A. gave the sum of two dollars as pretended remuneration for the object in question. *Held*, that they were responsible for the act of bribery committed by A., a sub-agent appointed by his general agent. *Cimon & Perrault*, 4 L. N., 945 S. C., Rep. 133, Su. Ct., 1881.

7. On the trial of a contested election petition under the Federal Elections Act of 1874.—*Held*, that in order to constitute an agent or candidate it is not sufficient to work at the election and desire the election of a candidate, but it is necessary to show that the candidate or his authorized agent accepted such assistance, and an act of corruption committed by a person before he was agent cannot be imputed to the candidate, as the appointment of an agent has no retroactive effect. *Magnan & Dugas*, 12 R. L. 226, S. C., 1882.

8. And where the powers of the agent are limited acts done in excess of such powers cannot be imputed to the candidate. *Ib.*

9. Where the agency of a person is limited to a particular act, e.g. making a speech for a candidate, and subsequently that person is guilty of an act of a doubtful character, he will not be deemed an agent of the candidate merely because he has been employed for a special purpose. *Généreux & Cuthbert*, 6 L. N. 74, S. C., 1883.

10. Pour être considéré comme un agent, il faut que le partisan agisse avec l'autorisation soit expresse, soit tacite du candidat, c'est-à-dire que, dans le cas où il n'y a aucune autorisation expresse, il faut que le candidat ait connu les services et le travail de son partisan, et qu'il les ait acceptés, ou qu'il y ait acquiescé de quelque manière. *Bernatchez & Fortin*, 9 Q. L. R. 81. S. C., 1883.

## V. BALLOTS.

11. Que dans l'espèce les marques faites sur le bulletin par le sous-officier rapporteur, pour la référence de ce bulletin à l'objection faite à ce vote n'affecte pas le bulletin et qu'il doit être compté. *Bernard & Brillon*, 7 L. N. 414, and M. L. R. 1, S. C. 121, 1881.

12. In a contestation of an election under the Quebec Elections Act. *Held* :—Que ceux des bulletins qui ne portent pas les initiales du sous-officier-rapporteur doivent être rejetés, s'il n'est pas établi d'une manière satisfaisante que l'omission est la faute ou l'erreur de ces officiers ; et que les bulletins ne doivent pas être trop rigideusement examinés, et que chaque fois que l'irrégularité de la commission pour indiquer le vote paraît être due à la maladresse, ou la raideur d'une main inaccoutumée, rude ou tremblante, à l'inattention ou à un effet pour corriger ce que l'on pouvait croire fautif ou pour faire plus prononcée ou plus droite une barre qui a pu paraître trop légère ou trop croche, chaque fois qu'il est évident que ce que l'on a ajouté à la croix requise, ou la forme qu'on lui a donnée, ou les additions dont on l'a ornée paraissent plutôt dus à la rudesse ou à l'incapacité de la main qui l'a tracée ou à un désir de se faire reconnaître, chaque fois que l'identification de l'électeur est rendue impossible par l'impossibilité de la reproduction des mêmes traits de crayon le vote doit être maintenu ; mais les bulletins qui ne portent que des barres soit verticales, soit horizontales, doivent être écartés. *Dionne & Gagnon*, 9 Q. L. R. 20. S. C. R. 1882.

13. *Juge*—Que des bulletins valides lors du dépouillement du scrutin par le sous-officier-rapporteur, invalidés subséquentement par des marques et indications qu'une main inconnue y aurait faites, et en conséquence écartés par le juge lors du décompte, devront être restitués au candidat en faveur de qui les dits bulletins auront été déposés et que les bulletins non-revêtus des initiales du sous-officier-rapporteur ne seront annulés que lorsque les circonstances les feront présumer frauduleux. *Bernatchez & Fortin*, 9 Q. L. R. 81. S. C. R. 1883.

## VI. CONTINUATION OF SAME ELECTION.

14. Until the exigency of the original writ of election is satisfied there is no election, and the several elections are considered one and the same election, even though the seat is not claimed for any one. *Lavoie & Gaboury*, 7 L. N. 186. S. C. R. 1883.



## VII. CORRUPT PRACTICES.

15. On the trial of an election petition it appeared that certain accounts having remained unpaid from a previous election notwithstanding that efforts were made to have them settled friends of the respondent informed him during the canvass that their non-payment would injure him and that they ought to be paid. The respondent replied that he would do nothing about the accounts during the election, and requested his friends not to say anything about them of any kind, but he stated his intention to have all legitimate accounts paid after the election. *Held* not to be a corrupt act within the meaning of the "Dominion controverted Elections Act, 1874." *Hickson & Abbott*, 25 L. C. J. 289, S. C. 1881:

16. And during the respondent's absence in England in 1878, and a few days before the nomination in that year, respondent's son gave \$150 to one W. a prominent supporter of the respondent in the County for the expenses of the election. W. promising to use it in a strictly legal manner. The respondent did not discover this expenditure until two months after the election was over, when he disapproved of it and ordered the amount to be charged to his son. W. rendered a rough account to the son by which it appeared that the disbursements made were legitimate, but he afterwards destroyed the rough draft and never rendered any formal account. In the course of the next year upon a settlement of accounts between the respondent, he remitted the charge made against his son. *Held* that these circumstances created no presumption that the disbursements of W. were illegal, and that they did not constitute an act of corruption by the respondent. *Ibid.*

17. For some time before and during the canvass the respondent advocated a change in the mail service between Lachute and Shrewsbury in which the post-master at Shrewsbury was active, and correspondence took place between them showing that he had done. In consequence the mail service between Lachute and Shrewsbury was improved and the post-master at Shrewsbury got the contract from the government for carrying the mails; but nothing occurred in the correspondence or discussions on the subject tending to show that the movement was intended to influence the election and the post-master was an old and firm supporter of the respondent. *Held* that a candidate cannot be precluded from performing during an election any duty incidental to his position in the interest of any part of his constituency, provided that he does not attempt by such means unduly to influence votes, and that the circumstances did not constitute a corrupt act by the respondent. *Ibid.*

18. And though one C., an agent of the respondent, represented to a large member of persons that it would be better for the

country and for them if the work on the Grenville Canal were let by tender according to law and not given to the existing contractor without tenders; that in that case they would have a better chance to obtain work for themselves and their teams, and that the respondent would have more influence to cause the work to be done by tender than the other candidate and would undoubtedly do so; and he (C.) himself declared that this argument had a considerable influence over a number of votes. *Held*, that these statements of C's did not constitute an illegal inducement to vote for respondent. *Ibid.*

19. It appeared however that one "G." a contractor and G. G. and S. his manager employed about 100 men on the canal and G. G. and S. were active supporters of the respondent. These two canvassed the men and found that a large majority of them intended to vote for the respondent. On the evening before the polling day, with the approbation of G the contractor, they told the foreman to tell the men to come to their work as usual and they would be all taken to the polls by the teams without distinction whether they voted for the respondent or not and be brought straight back again; and they were given to understand that if they went and came straight back nothing would be deducted from their pay without distinction as to the mode in which they vote. This had been the custom in all former elections, as well municipal as parliamentary. *Held*, that abstaining from charging the men for their lost time was under the circumstances an act of corruption sufficient to avoid the election. *Ibid.*

20. One R. a voter who worked under G. was asked by G. if he would go off with him to vote, to which he replied he would prefer not to do so as he was a poor man and had friends on the other side who would be offended by his doing so, and he would therefore stay at work. G. assented and left him at work. After his time had been taken for the afternoon one of the agents of the other candidate coming up R. accompanied him to the poll and voted aloud for the other candidate. G. meeting him on his return ordered him to be dismissed, and he was accordingly dismissed from the works. But the evidence was conflicting as to whether he was dismissed because he voted for the other candidate, or because he had deceived his employer. *Held* that the weight of evidence went to show that he was dismissed because he voted against the respondent, and that his dismissal was therefore an act of intimidation avoiding the election. *Id.*

21. A person had been furnished with a list of voters resident in Montreal which he had given to one B. with instructions to see them. The respondent telegraphed him two names to be added to the list and asked him to procure certain canvassers at Montreal and to send them to the county. This person

sent B. to obtain canvassers and gave him nine railway tickets without specifying distinctly to whom they were to be given, but as he stated in evidence intended to be furnished to them. B. seeing two persons on the platform whom he knew to be voters going up to vote gave to each of them one of the tickets. He returned two but it was not proved what he did with the remainder. *Held* that under the circumstances B. was an agent of the respondent, and the delivery of the tickets to the voters was a corrupt act sufficient to void the election. *Ibid*.

22. On the trial of an election petition the payment of five dollars by the candidate to a carter to drive him from St. Gervais to St. Charles in a heavy snow storm and return the following day, the time occupied having been twenty-eight hours was held to raise no presumption that the money was paid with a corrupt motive. *Mercier & Amyot*, 8 Q. L. R. 33, S. C., 1881.

23. And where four dollars was paid to an elector as his tax as a witness on the trial of a former election petition it was held that the payment of a debt legitimately due cannot be considered an act of corruption even if the payment has had an influence on the election. *Ib*.

24. And the payment of three dollars to a hotel keeper for the use of his house for the holding an election meeting was held under the circumstances not to constitute a corrupt act. *Ib*.

25. And where treating is indulged in after the election it must be shown to be in fulfilment of a promise made anterior to the election or for the purpose of corrupting the electors generally to constitute a corrupt act. *Ib*.

26. But though such treating may be innocent in itself it is open to censure when it is done in the polling booth on account of its corrupt and pernicious example. *Ib*.

27. With regard to threats it is not necessary that the threat should have produced an effect on the mind of the elector. In order to constitute the offence it is sufficient if the threat has been made. *Ib*.

28. In the absence of proof of anything like a general system of corruption an isolated case of offering a trifling amount to an elector to induce him to suspend his work and attend an election meeting would not be regarded as a violation of the contested elections act, if the intention was simply to induce him to attend the meeting in the hope that he might be influenced by the discussion. *Ib*.

29. On a contestation of an election petition under the Federal Elections Act of 1874.—*Held* that it is not the motive which actuated the person corrupted which should be taken into consideration, but the intention of the corruptor and where an act charged as being corrupt is susceptible of two interpretations the judge should give to it that which is most favourable. *Magnan & Dugas*, 12 R. L. 226, S. C., 1882.

30. But when the corrupt motive is clearly established the quantity of refreshment or liquor furnished is immaterial and can only be taken into account where there is doubt as to the intent of the parties. *Ib*.

31. And a promise in order to constitute a corrupt practice must be clearly established and form an obligation on the part of him who makes it. *Ib*.

32. And *Held* also that treating is not to be entirely prohibited during election time, but the law prohibits only such treating as is done for the purpose of corrupting the electors. *Ib*.

33. The defendant was charged with having incurred the penalty imposed by the Quebec Election's Act for bribery, and it appeared in evidence that the defendant paid one H. \$6 to go from Lavaltrie to Montreal for a load of a thousand pounds, but the load turned out to be a package of cotton of about ten pounds weight. *Held* that the engagement of H. was a sham and done to secure his absence from the polls and penalty of \$200, or six months imprisonment imposed. *Lapierre & Lavolette*, 6 L. N. 415, Q. B., 1882.

34. And in another case the defendant called on a person who was very poor and lived to some extent on charity, and asked the man if he would vote, to which the man replied he would, but would not say for whom upon which defendant gave the man's wife \$5. Judgment imposing a similar penalty reversed in appeal, but partly on the ground that there was no legal proof of the election having been held. *Hebert & Choquette*, 6 L. N. 414, Q. B., 1883.

35. In an election case, *Held*, that evidence of corrupt acts and bribery is not admissible under a bill of particulars in which the names and descriptions of the alleged bribers are not given. *Généreux & Cuthbert*, 6 L. N. 74, S. S., 1883.

36. Passes, which were not paid for by the giver, presented to electors to take them to the polling place, do not constitute a "valuable consideration" within the meaning of the Act. *Ib*.

37. And telling a carter who was asked to bring a voter to the poll, "tu feras ton compte et tu iras te faire payer," even if the words were used by an agent of the candidate, is insufficient to avoid an election. *Ib*.

38. And the advance of a sum of money by a candidate for the travelling expenses of a canvasser, who was also an agent and a voter, will not be held to avoid the election where the Court is of opinion that the advance was made in good faith, though the item was subsequently omitted in the candidate's statement of personal expenses. *Ib*.

39. On the trial of an election petition it was proved that the agents of respondent had employed a number of persons to act as policemen at one of the polling places in the parish of Baie St. Paul, on the polling day, for the ostensible purpose of keeping the peace. It was not in evidence that they had applied to the proper authorities or otherwise com-

plied with the law in order to secure the peaceful conduct of the election, but the reason assigned by him for ordering the employment of policemen was that he had received intimation by telegrams and letters that roughs were coming down from Quebec to Baie St. Paul to interfere with the polling of the electors. No person came and the polling took place without any interference. The four persons employed were known to be supporters of the appellant and swore that they had voted for the respondent because they had received from him the sum of two dollars each. *Held*, a colorable employment and a corrupt practice. *Cimon & Ferrault*, 4 L. N. 94, and 5 S. C. Rep., 133, Su. Ct., 1881.

40. In another case the charge was as to the bribery of one A. During the election canvass the respondent gave A. at whose house he stopped two or three times, \$5 for the trouble he gave him. A. swore it was not worth more than a dollar. This amount together with other amounts paid out by the appellant during his canvass was not furnished to his agent as part of his personal expenses and did not appear in the official statement of legal expenses furnished to the returning officer. *Held*, that the candidate is bound to include in the published statement of his election expenses his personal expenses, and as appellant had not included in the said return the said amount of \$5.00 and A. had not earned more than a dollar, the payment of \$4 more than was due was an act of personal bribery. *Larue & Deslauriers*, 4 L. N. 95, and 5 S. C. Rep., 91, Su. Ct., 1881.

41. In an action under the Quebec elections Act in which it was attempted to show grounds for personal disqualification of the candidate. *Held* that where the evidence of a corrupt promise by the candidate is contradicted in important particulars, and the candidate wholly denies it on oath, the Court will not base thereon the judgment of personal disqualification. *Lavoie & Gaboury*, 7 L. N. 186, S. C. R. 1884.

42. The payment of money by an agent to a canvasser will not be held ground for personal disqualification unless it be shown that the candidate was aware of such payment. *Ibid*.

43. The payment by the candidate himself of a sum of money for election purposes to a person concerned in his election, is a matter to be judged by the circumstances attending such payment, and where the payment in question was made to a person strongly in favor of the candidate, and who required no inducement to support him, it was held no ground for personal disqualification. *Ib*.

44. In a contestation under the Dominion Elections Act.—*Held* that the serving of a notice upon persons, warning them that they are not entitled to vote, and threatening them with the legal consequences if they vote, is not an interference with the exercise of the franchise. *Cholette & Bain*, 7 L. N. 220, S. C. 1884.

45. Where voters drank and caroused on the road to the poll, but there was no evidence of treating by an agent of the candidate, held not to affect the election. *Ib*.

46. In a contested election case under the Dominion contested Elections Act of 1884.—*Held* that paying or promising to pay accounts due for a previous election is a corrupt practice. *Dussault & Belleau*, 10 Q. L. R. 247, S. C. 1884.

47. And the employment of carters to carry voters to the polls on the day of election is also a corrupt practice. *Ib*.

#### VIII. COSTS IN ELECTION CASES.

48. Where an election had been avoided on the trial of an election petition, but the petitioners had examined a large number of witnesses from many of whom nothing was elicited in support of their charges and they also examined many of such witnesses at very great length, thereby causing great expense. *Held* that the respondent should pay the costs of the proceedings, but that the petitioners should pay one half of the costs of the *enquête*. *Hickson & Abbott*, 25 L. C. J. 290, S. C. 1881.

49. Where on the trial of a petition under Contested Elections Act of the Province of Quebec, costs have been awarded to either of the parties the recovery of these costs is by proceeding in the Superior Court in the ordinary manner and therefore where a *saisie-arret* had issued for such costs.—*Held* that the contestation of the Garnishee's declaration was properly had in the Superior Court and was subject to revision and appeal as in ordinary cases. *Bouchard & Corporation de la Malbaie*, 10 Q. L. R. 102, S. C. R. 1884.

#### IX. DELAYS IN.

50. Where the petitioners have presented their petition and served a notice and copy thereof upon the respondent, it is not competent to them to serve another notice and copy even within five days from such presentation and before the expiration of the five days allowed for answering, and before the respondent has in fact produced his answers, and such second copy of the petition, and notice will, on motion, be struck from the record. *Roussel & Rinfret*, 8 Q. L. R. 278, S. C. 1882.

51. Under the Quebec Controverted Elections Act, the filing of an answer on the sixth day after service of the petition is within the delays. *Lavoie & Gaboury*, 6 L. N. 276, S. C. 1883.

#### X. DEPOSIT.

52. Where an election petition is against two defendants it will be considered with respect to the security as two separate petitions, and as many deposits of \$1000 must be made as there are defendants. *Bernatchez & Fortin*, 8 Q. L. R. 49, S. C., 1882.

53. But the obligation to give security in this way that where one deposit only is made and there are two defendants, it will be considered sufficient with regard to one and null as to the other, and in such case the Court will look to see who is the principal defendant, that is he against whom the petition is principally directed, as for instance, the candidate whose return is petitioned against, and holding the deposit good and sufficient with regard to him will discharge the other. *Id.*

54. In an election case under the Quebec controverted Election's Act,—*Held* that a person put into the cause for alleged corrupt practices is not entitled to a deposit. *Lavoie & Gaboury*, 6 L. N. 276, S. C. R., 1883.

55. *Jugé*: Que lorsque dans une action pénale d'après l'acte électoral fédéral tel qu'amendé par 46 Vict., ch. 4, sec. 1, un demandeur par une seule et même action demande le recouvrement de plusieurs pénalités ou amendes, il doit faire, avec son *précipe*, un dépôt de \$50 pour chacune des dites pénalités dont il demande le recouvrement. *Choquette & Hebert*, 7 L. N. 178, Q. B., 1884.

56. Qu'un défendeur sous l'Acte des Elections contestées de Québec, section 55, peut être admis à produire une contre pétition sans donner un cautionnement ou faire un dépôt. *Lavoie & Gaboury*, 3 L. N. 78 & M. L. R. 1, S. C. 75, 1884.

57. The petitioner and not his attorney is given the right to withdraw the deposit. *Dionne & Gagnon*, 9 Q. L. R. 210, S. C. 1883.

#### XI. ELECTION EXPENSES.

58. Le défendeur, candidat élu, omit de mentionner parmi ses dépenses d'élection, publiés en conformité à la section 284 de l'acte électoral de Québec une somme de \$..... qui a été payée à diverses personnes pour des *finis d'élection*. *Jugé* que le candidat est tenu de n'omettre de son compte aucunes dépenses et qu'une omission de ce genre entraîne une présomption que ces dépenses ont servi à des manœuvres frauduleuses, et que l'élection doit être annulée. *Dorais & Houde*, 9 Q. L. R. 15, S. C. 1882.

#### XII. EVIDENCE UNDER.

59. In an action under the Quebec Elections Act, the holding of the election must be proved by the certificate of the returning officer. *Hébert & Choquette*, 6 L. N. 414, Q. B. 1883.

60. And where the action is for a penalty, the corrupt inducement to vote or refrain from voting must be clearly proved. *Id.*

#### XIV. INDUCING NON VOTERS TO VOTE.

61. Action under 36 Vict. c. 39, sec. 74. by respondent against appellant, accusing him of having induced one J. D. *alias* J. C. D. to vote at an election for a member to

serve in Parliament, he the said J. D. not being a voter. Appellant was condemned to pay the sum of \$200 or to be imprisoned for six months. On the evidence judgment reversed. *Pouliot & Cadorette*, 5 L. N. 417, Q. B. 1882.

#### XV. INTERVENTION.

62. Lorsque l'instruction d'une pétition d'élection est terminée et que l'inscription pour audition devant la Cour Supérieure, siégeant en Révision, a été faite et produite, une intervention de la part d'un électeur demandant à être reçu partie dans la cause, à la place du pétitionnaire, ne pourra être reçue par la Cour Supérieure présidée par un seul juge, ou par un juge de cette cour, vu que la cause ne se trouve plus alors devant cette cour, mais se trouve devant la Cour Supérieure siégeant en Révision. *Décary & Mousseau*, 7. L. N. 359, & M. L. R. 1, S. C. 25, 1884.

#### XVI. JURISDICTION IN CASES OF

63. On the trial of an election petition it was found that the court had no jurisdiction.

In the Supreme Court the appeal being limited to the question of jurisdiction the judgment was reversed and the record ordered to be sent back to the proper officer of the lower court to have the cause proceeded with according to law. *Held* that the Court could not, even if the appeal has not been limited to the question of jurisdiction, have given a decision on the merits, and that the order of this court remitting the record to the proper officer of the court *a quo* to be proceeded with according to law gave jurisdiction to proceed with the case on the merits and to pronounce a judgment on such merits, which latter judgment would be only properly appealable under Sec. 48, Supreme Court Act. *Larue & Deslauriers*, 4 L. N. 95 and 5 S. C. Rep. 91, Su. Ct., 1881.

#### XVII. MISNOMER.

64. The petitioner Mr. N. B. of the village of Montmagny, *marchand*, filed his petition against the return of the candidate declared to be elected, one of the respondents, and the other as returning officer asking that the return of election be set aside and that the respondents be condemned to pay costs of proceedings "*dans telle proportion que la Cour trouvera juste et raisonnable*." The petitioner made only one deposit of \$1000. The respondents pleaded separately and filed separate *objections préliminaires*, one of the objections insisted on by the returning officer was "*qu'il n'existe dans le village de Montmagny aucune personne du nom de N. B., marchand mais qu'il existe une personne du nom de N. Bernèche et que cette personne doit être le pétitionnaire lequel est erronément nommé Bernatchez en la prétendue pétition*." An extract of baptism was produced showing that the petitioner was baptized under the

name of *Nazaire né du légitime mariage de Jean-Baptiste Bernèche et Marie Talbot dit Gervais*. The petitioner on the other hand showed that he, his father and his grand father had been married under the name of Bernatchez, though his ancestors previous to that appeared to have borne the name of Bernèche. *Held* that the petitioner was sufficiently designated by the name he was accustomed to go by, and by which he was designated on the list of electors. *Bernatchez & Fortin*, 8 Q. L. R. 49, S. C. 1882.

#### XVIII. PAYMENT OF WITNESSES.

65. Application on behalf of a witness in the Vercheres election case praying that he be paid the amount for which he had been taxed for attendance as a witness out of the deposit made with the prothonotary as security for the costs in the case. The case was still pending before the court. Application rejected on the ground that the witness had no right to be paid out of the deposit pending the suit. *Lalonde & Archambault*, 6 L. N. 300, S. C. 1883.

#### XIX. PENALTIES UNDER.

The one hundred and ninth section of "The Dominion Elections Act 1874," is hereby amended, by adding thereto the following provision :

"But no action or information for the recovery of any such penalty or forfeiture unless until the person suing for the same shall have given good and sufficient security to the amount of fifty dollars, to indemnify the defendant for the cost occasioned by his defense if the person suing should be condemned to pay the same. Q. 4 Vict. Cap. 4.

#### XX. PERSONATION.

66. On the trial of an election petition it was charged that the agent of the respondent had incited one F. L. to commit the offense of personation. It appeared that there were two brothers, one F. L., and the other E. L., owning in the same range property taxed at an amount sufficient to qualify them to vote. On the first list the names of E. and F. were entered, but on the list sent to the deputy returning officer, there was the names of but one elector entered as "F. E. L." F. L. presented himself to vote and was refused. He said in his evidence that when he demanded to vote he was told that his name was not on the list. McK. (the agent) then drew him on a side and whispered to him to vote as *François-Edouard Langevin*. He did not believe McK. knew what party he was for. He did not vote as requested. He told one of his friends his name had never been anything but *François* and he would not vote. McK. denied having asked him to vote whether his name was on the list or not. He believed the person he spoke to was the person whose name was on the list. *Held* that there was no proof of malice or intent to corrupt and the offense of inciting

to personation was not committed. *Mercier & Amyot*, 8 Q. L. R. 33, S. C., 1881.

#### XXI. POWER OF CLERK OF CROWN IN CHANCERY WITH RESPECT TO VOTING PAPERS.

67. On the preliminary examination of a charge against the returning officer for Montmagny in connection with a recent election, the clerk of the Crown in Chancery was summoned by subpoena *duces tecum* to produce the voting tickets, and made no response. Subsequently a warrant was issued under 32 & 33 Vic., Cap. 30, Sec. 26, (1) to compel him to come up and produce the tickets, in virtue of which he was brought before the Justice of the Peace conducting the inquiry. On being examined he testified that he had received the subpoena and that he had in his possession and custody the tickets of the voters at the late election. On being required to produce them he refused relying on the 216th section of the Quebec Election's Act; and thereupon was committed by the magistrate to the common gaol under 32 & 33 Vic., Cap. 30, Sec. 28. (2) On application to the

(1.) If any person so summoned refuse or neglect to appear, at the time and place appointed by the summons and no just excuse be offered for such neglect or refusal, (after proof upon oath or affirmation, of the summons having been served upon such person, either personally, or left with some person for him, at his last or usual abode,) the justice or justices before whom such person should have appeared, may issue a warrant (L. 2) to bring such person, at a time and place to be therein mentioned before the justice who issued the summons, or before such justice or justices of the peace for the same territorial division, as may then be there, to testify as aforesaid and the said warrant may, if necessary, be backed as hereinbefore mentioned, in order to its being executed out of the jurisdiction of the justice, who issued the same. C. 32, 33, Vict. C. 30, S. 26.

No person shall be allowed to inspect any admitted or rejected ballot papers, in the custody of the Clerk of the Crown in Chancery, or obtain the production thereof, except under the rule or order of the Court of the province, or of a judge thereof, such rule or order shall be granted by such court, or judge, on evidence on oath, that the inspection, or production of such ballot papers, is required for the purpose of instituting or maintaining a prosecution, for an offense, in relation to such ballot papers, or for the purpose of preparing, or sustaining a petition, questioning an election or return. Any order for the inspection or production of ballot papers may be made subject to such conditions, as to persons, time mode, place of inspection or production, as the Court or judge may think expedient, and the candidates shall be notified of the day and hour fixed for the examination. Each such rule or order shall be final and without appeal, and shall be obeyed by the Clerk of the Crown in Chancery under pain of punishment for contempt of court. Q, 38 Vict. Cap. 7, S. 216.

(2.) If on the appearance of the person so summoned, either in obedience to the summons or by virtue of the warrant, he refuses to be examined upon oath or affirmation concerning the premises, or refuses to take such oath or affirmation, or having taken such oath or affirmation, refuses to answer the question

Superior Court for a writ of *habeas corpus*.—*Held* that on a criminal investigation, the Quebec Election's Act could not be cited to set aside the criminal procedure, which was under the jurisdiction of the Parliament of Canada, and the petitioner was properly imprisoned. *Huot Exp.*, 8 Q. L. R. 57, S. C., 1881.

## XXII. PRELIMINARY OBJECTIONS.

68. Among the preliminary objections to an election petition the principal were as to the bailiff's return. It was argued that in the case of a service of a writ of summons the original writ was in the hands of the bailiff making the service, and he is bound to exhibit it to the person served: that the bailiff had not the original petition at the time he served the respondent with his copy and that this was a fatal omission. *Per curiam*.—There exists a reason in the case of a writ which is wholly wanting in a case on an election petition—the writ is addressed to any bailiff of the court and it commands him to serve the defendant; his possession of the original writ establishes his authority to execute it in the manner it directs, and hence he is bound to show it to the defendant. But an election petition is presented by delivering it to the prothonotary in whose hands it must remain. The law makes it the duty of the petitioner to serve a notice of the said presentation of the petition, and of the security accompanied by a copy of the petition. All these formalities the return of the bailiff establishes to have been duly observed. *Julien & de St. George*, 8 Q. L. R. 361, S. C., 1882.

69. And *held* also that the attorney of the petitioner could certify the copies of the petition, receipt, &c., as well as the prothonotary. *Ib.*

70. On the trial of an election petition *held* that proof of corrupt practices alleged to have been committed by the petitioner could not be allowed on preliminary objections as it did not affect the right of the petitioner to petition, which was sufficiently attested by the fact that his name appeared on the list on which the election had been had. *Bernatchez & Fortin*, 8 Q. L. R. 49, S. C., 1882.

## XXIII. PROCEDURE IN.

71. The defendant, in a contested Election Case in which the petitioners claimed the seat

concerning the premises then put to him, without giving any just excuse for such refusal, any justice of the peace then present, and their having jurisdiction may by warrant (L. 4) commit the person so refusing, to the common gaol or other place of confinement for the territorial division where the person so refusing then is there to remain and be imprisoned for any time not exceeding ten days, unless he, in the mean time, consents to be examined and to answer concerning the premises. C. 32 and 33 Vic. Cap. 80 S. 23.

for a candidate not in the case who sets up, by way of defense, that the candidate for whom the seat is claimed has been guilty of corrupt practices, and who causes a copy of such pleas to be served upon the candidate in question with a notice to answer it, if he thinks proper, does not by such notice, bring the candidate into the place, and such candidate cannot appear and plead in the place without an intervention in the ordinary manner. *Tremblay & Guibaut*, 11 R. L. 523. S. C. 1882.

## XXIV. QUALIFICATION OF ELECTORS.

72. The qualification of an elector may be proved by production or copy of an extract from the voters' list but cannot be proved by witnesses. *Magnan & Dugas*, 12 R. L. 226, S. C. 1882.

73. A person paying the rent of a house in which he resides one day in the week is a tenant within the meaning of the Quebec Elections Act 1875. *Beaudet & The Corporation of the Parish of St. Ignace*, 6 L. N. 183, S. C. 1883.

## XXV. QUALIFICATION OF MEMBERS.

1. From and after the sanctioning of this Act no real estate qualification shall be required of any candidate for a seat in the Legislative Assembly of this province, or of any members of the said assembly, but such candidate must be at least twenty-one years of age, of the male sex, a subject of Her Majesty by birth or naturalization and free from all legal disability.

2. In consequence of the preceeding provision sections 124 to 136 both inclusively, of the act of this province 38 Vict. Chap. 7 are repealed.

3. Section 15 of the act of this province, 39 Vict. Chap. 13, amending sections 135 of the aforesaid act, 38 Vict. Chap. 7, is also repealed.

4. This act shall not affect election contestations now pending, but it shall put an end, from the day of its sanction, to all penal actions then pending or adjudged, resulting from default of property qualification, whether for a former parliament or for the present parliament except, with respect to costs.

5. This act shall come into force on the day of its sanction. Q 45 Vict. Cap. 7.

74. A member who has made an assignment of his effects under the Insolvent Act of 1875, and had entered into a deed of composition by which his stock has been placed in the hands of trustees, until a composition is paid, is not proprietor of the property in the sense of S. 124 of the Election Act of Quebec, and is subject to a penalty of \$2000 for every day which he sits as member without having the qualification required by law. *Legris & Duckett*, 11 R. L. 121, S. C. 1881.

75. Property possessed by the wife *séparée de biens* of a member of the Legislative Assembly of Quebec cannot be taken into account in an inquiry into the qualification of such member. *Legris & Duckett*, 5 L. N. 94, S. C. 1882.

## XXVII. SECRECY IN VOTING.

76. Que le secret de la votation est établi

en faveur du voteur, et qu'il peut, lorsqu'il réclame son bulletin, déclarer de vive voix pour qui il entend voter sans pour cela perdre son droit de vote. *Bernard & Brillon*, 7 L. N. 414 & M. L. R. 1 S. C. 121, 1881, et *Dionne & Gagnon*, 9 Q. L. R. 20, S. C. R. 1882.

#### XXVII. SECURITY UNDER, *see* DEPOSIT.

77. Where an election petition under the Quebec controverted Elections Act which is brought against the candidate returned, charges illegal acts against the deputy returning officer by name who does not appear in the suit, the respondent cannot ask for any security other than that which is required to be given upon a simple petition; as a deputy returning officer against whom nothing is prayed for by the petition and who does not appear is not a respondent within the meaning of the Act. *Dansereau & Bernard*, 5 L. N. 38, & 28 L. C. J. 233, S. C., 1882.

#### XXVIII. SUMMONS UNDER.

78. In a contestation under the Quebec elections act. *Held* that under sections 272, 273 and 274 of the Quebec Election Act of 1875, a regular summons to a person charged with a corrupt practice to appear at a place, day and hour fixed, must be issued. If the party fails to appear, he may be condemned on evidence already adduced on the trial of the election petition, but if he does appear, the case is to go on as an ordinary case, and the judgment is to be given on evidence then to be adduced. *Lavoie & Gaboury*, 7 L. N. 186, S. C. R. 1884.

#### XXIX. UNDUE INFLUENCE.

79. On the trial of an election petition in which charges were made against six priests of the district in which the election occurred of having used undue influence on behalf of the successful candidate—*Held* that a priest or clergyman may take the side of a candidate in an election and support it by all lawful means, even from the pulpit. But if a priest uses intimidation by refusing the sacrament to a person who will not vote as he wishes, he will be deemed the agent of the candidate, and the fact that he has committed the unlawful act in the exercise of his priestly office will not protect the candidate from the consequences of such unlawful act on the part of an agent. *Massé & Robillard*, 4 L. N. 3, S. C. R. 1880.

80. In an action for the penalty for intimidation under the parliamentary elections Act of 1874 it appeared that the language relied on was as follows: F., cette année il faut que tu votes pour M. A., si tu ne votes pas pour M. A., je le saurai, et après l'élection tu auras affaire à moi," or "qu'ils joueraient ensemble." The person who used this language was proved to have been drunk at the time, and

the person to whom it was uttered was proved to have thought nothing of it. Action dismissed. *Mackenzie & Turgeon*, 5 L. N. 335, Q. B. 1882.

#### XXX. VOTERS LISTS.

81. On the trial of an election petition it was charged that the voters list of the parish of St. Andrews was rendered illegal by the following facts: The valuation roll from which it was made had a number of names added to it by the council upon the revision of it, and on an appeal to the Circuit Court these names so added were all struck off for some irregularity in the mode in which they had been so added; but pending the discussion of the matter in the Court the time fixed by the law for the making of the voter's list arrived, and the secretary-treasurer made his list from the valuation roll as amended, the judgment striking off the added names not having then been rendered. Some of the voters appealed to the Court against the voter's list, but their appeal was rejected as being too late. *Held*, that the judge sitting at the trial of an election case cannot determine the validity or invalidity of a voters list, inasmuch as the law furnishes a mode of contesting a voter's list, and if such mode be not followed the judge holding an election trial cannot interfere with the list. *Hickson & Abbott*, 25 L. C. J. 290, S. C. 1881.

82. And that in making the list pending an appeal the secretary treasurer acted properly, and if any one objected to the list he should have appealed against it in the manner provided by the law. *Ibid*.

#### XXXI. VOTES.

83. In a contested election case, *held*, que lorsque, sur contestation d'une élection, le tribunal trouve que chacun des candidats a reçu un égal nombre de suffrages, il doit annuler l'élection. *Dionne & Gagnon*, 9 Q. L. R. 20, S. C. R., 1882.

84. Et sous "l'Acte Electoral de Québec," les listes d'électeurs ne déterminent pas d'une manière finale la majorité ni la nationalité britannique de l'électeur. *Ib*.

85. Le vote donné par un mineur doit être retranché si une preuve légale permet de découvrir pour quel candidat il a voté. *Ib*.

86. In a contested election case under the Quebec Elections Act, *Held*, that where the deputy returning officer has omitted to make a statement of the votes given to each candidate under 38 Vic., cap. 7, sec. 193 (1) it is

(1) The deputy returning officer, shall make out a statement indicating the number,

1. Of the accepted ballots papers.
2. Of the votes given to each candidate.
3. Of the rejected ballot papers.

4. Of the spoiled and returned ballot papers.
5. Of the ballot papers, which have not been used

and are returned by him. He shall make and keep a copy of such statement, and enclose the original in the ballot box. Q. 38 Vic. c. 7, s. 193.

the duty of the returning officer to ascertain by reference to the documents the total number of votes for each candidate at the poll in question, and if the returning officer has failed to do so a re-count may be ordered by the judge. *Mousseau Exp.*, 6 L. N. 354, S. C., 1883.

## XXXII. VOTING.

87. On the trial of an Election petition it appeared that at one of the polls a certain number of persons had their ballots marked by the deputy returning officer without having been made to take the oath that they could not themselves mark their ballots, some of them voting openly by causing their ballots to be marked in the room where several persons were besides the returning officer and clerk and the representatives of the two candidates; but all these took place in good faith and without the voters having been induced to act in that way by any fraudulent or corrupt practice on the part of the respondents agents or of the deputy returning officer. The voters appeared to act in this way of their own will, and without having been asked or urged to do so by any one, and the returning officer also appeared to have acted in good faith. *Held* that the votes so taken were irregular and illegal and that was much as the number of illegal votes thus taken was not great enough to change the result of the election, even if they all had voted for the respondent, and the illegality thus committed was not great enough to annul the election. *Hickson & Abbott*, 25 L. C. J. 290. S. C. 1881.

ELECTION OF DOMICILE—*See*  
DOMICILE.

## EMPHYTEOSE.

I. WHAT IS, *see* LEASE, EMPHYTEUTIC.

EMPIÉTEMENT—*See* ACTION EN  
BORNAGE & BOUNDARIES.

## EMPLOYEES.

I. RIGHTS OF, *see* MASTERS & SERVANTS.

## EMPLOYERS.

I. LIABILITY OF FOR NEGLIGENCE OF SERVANTS, *see* DAMAGES.

## ENCLAVÉ.

I. DROIT DE PASSAGE, *see* SERVITUDES.

ENCROACHMENT—*See* BOUNDARIES.

## ENDORSEERS.

I. LIABILITY OF, *see* BILLS OF EXCHANGE.

## ENFANS.

I. MEANING OF WORD, *see* CHILDREN.

## ENGLISH ARMY ACT.

I. APPLICATION OF IN CANADA, *see* MILITIA LAW.

## ENQUETE.

I. INSCRIPTION FOR, *see* PROCEDURE.

## ENTRIES.

I. IN PUBLIC BOOKS, *see* EVIDENCE.

## ERECTION.

I. CIVILE ET CANONIQUE OF PARISHES, *see* PARISHES.

## ERROR.

I. IN CERTIFICATE FOR PEREMPTION, *see* PEREMPTION.

II. IN JUDGMENTS, *see* JUDGMENTS.

III. POWER OF COURT OF APPEAL TO CORRECT. *see* APPEAL.

IV. WRIT OF, *see* CRIMINAL LAW.

## ESCHEATS.

I. ACT CONCERNING.

Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows :



Property that has devolved or shall devolve upon the Crown by escheat, and property confiscated for any cause whatever, except for crime, are under the control of the commissioner of Crown Lands. Q. 48 Vict. Cap. 10 Sect. 1.

Such property may be sold, ceded and transferred by the Lieutenant Governor in Council upon such conditions as he may impose. Sec. 2.

The Lieutenant Governor in Council may also dispose of the whole or part of such property gratuitously, with or without conditions, in favor of any person whatever, with the view either of transferring it to some person having claims to exercise or equitable rights against the person who had been proprietor, or to carry out the intentions or wishes of such person, or to reward those who discovered or made known the existence of such property. Sec. 3.

The Lieutenant Governor in Council may also dispose of gratuitously, or by onerous title, in the manner regulated by sections 1 and 2 of this act, all interest in, rights over, or pretensions to the said property, and the transferee may in his own name apply to the courts to be placed in possession and adopt all proceedings which the crown might adopt. Sect. 4.

This act shall not apply to confiscated or escheated property with respect to which there exists special statutes. Sect. 5.

This act shall come into force on the day of its sanction. Sect. 6.

## ESTATE.

### I. OF INSOLVENT, *see* INSOLVENCY.

## EVICION.

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### XIII. OF

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### XIV. PAROLE.

### XV. PRIVILEGED COMMUNICATIONS.

### XVI. PROOF OF PAYMENT.

I. ADDUCED WITHOUT OBJECTION CANNOT AFTERWARDS BE REJECTED.

88. Case of *Paige & Ponton* (II. Dig. 306-140) reported at length 26 L. C. J. 155, Q. B. 1877.

### II. ADMISSIONS.

89. Answers of a party may be divided in certain cases. The action was to recover from the defendant \$100 alleged to have been confided by plaintiff through one S. J. (since dead) to defendant to be deposited in the Savings Bank in the name of plaintiff. The complaint was that defendant had converted this sum to his own use, and paid interest on it for two years. Plea general denial. Defendant on interrogatories admitted receiving the sum in question but said that he had returned it to her, save \$2, and a few cents. He admitted also that the deposit was made in his own name as he had made them so before. Other explanations given by defendant were contradicted by other witnesses, in so much that the Court was of opinion that there was no reliance to be placed on the answers of defendant and that he had committed perjury. *Held*, (following *Goudreau & Poisson*) (1) that the admissions, in such cases could be divided, and also where the statement under oath did not agree with the pleading. *Montpetit & Pelardeau*, 4 L. N. 146, S. C. 1881.

90. An admission by a defendant under oath that he received a voluntary deposit but had delivered it as requested, cannot be divided, and verbal evidence is not admissible to contradict the accessory statement of delivery in a case where proof of the deposit could not be made by witnesses. *Dubuque & Dubuque*, 7 L. N. 32, S. C. R. 1883.

91. Action for \$300 money lent. The plea admitted the debt but set up matters in compensation and in payment. The only evidence of the loan was the admission in the plea, and of the defendant examined as a witness. In his deposition the defendant admitted having received the \$300 as a loan but said he had since paid it. He was not asked how he had paid it. It was also in

(1) 13 L. C. J. 235.

evidence that subsequently to these transactions the mother of plaintiff and wife of defendant had died and a partage of the property of the community had been made in which the plaintiff claimed nothing on account of the loan. *Held* that where the *aveu* is coupled with a plea of compensation merely it may be divided, but when with a plea of payment merely it is indivisible. Action dismissed. *Marmen & Marmen*, 10 Q. L. R. 32, S. C., 1884.

92. The admission of the defendant "*sur faits et articles*," which the plaintiff requires only as a commencement of proof in writing, may be divided so as to allow of parole evidence of an amount greater than that admitted and of other amounts alleged in part to be repaid. *Morin v. Fournier*, 10 Q. L. R. 129, S. C. R., 1884.

93. To an action *pro socio* alleging a partnership and asking for an account of the profits, the defendant pleaded that the plaintiff was only an employee, but at the same time he admitted that there was an understanding that he was to have half the profits as salary, and the defendant repeated this when examined as a witness. Then another witness was asked whether he had any transaction with the parties and whether they acted therein, individually or as partners. *Held*, following *Fulton & McNamee*, (1) that the *aveu* of the defendant was indivisible, and did not constitute a commencement *de preuve par écrit*, and therefore verbal evidence of the partnership was inadmissible. *Pratt & Berger*, 7 L. N. 235, & 28 L. C. J. 192, Q. B., 1884.

### III. BURDEN OF PROOF.

94. In an action against a common carrier for damage to the property entrusted to him the burden of proof is on him to show that for some reason he is not liable. (2) *Robert & Laurin*, 26 L. C. J. 381, S. C. R., 1882.

95. In an action on a note signed by the president of a Joint Stock Company, the burden of proof is on the company to disprove the authority of the president. *Brice & Morton Dairy Farming Co.*, 6 L. N. 171, S. C. R., 1883.

### IV. BY CERTIFICATE OF PROTHONOTARY.

96. The defendant was arrested under *capias* and gave bail under the art. 825, C. C. P., that he would surrender to the sheriff when required to do so by an order of the court within a month from the service of such order on him or on his sureties. Later, the plaintiff moved that as the defendant had not made an abandonment of his property under Art 766, he should be imprisoned, and also

that the court should give the order to surrender within a month. In answer, the defendant said he had effected a composition with his creditors, and filed a certificate of the prothonotary to that effect. *Per Curiam*.—The only point is whether the certificate of the prothonotary is complete proof of the execution of such a deed between these parties, and it seems clear that it cannot be so held, and still less is it a proof of the fact of the composition. We see however that this man may have a right and yet we see also that the plaintiff is entitled and succeed completely because this right has not been established. We therefore render the judgment that might have been given below and we order that the motion be answered in writing within eight days, and we discharge the inscription and condemn the defendant to pay the costs of review. *Osborne & Paquette*, 4 L. N. 50, S. C. R. 1881.

### V. BY COPIES OF ENTRIES IN PUBLIC BOOKS OF ACCOUNT.

A copy of any entry in any book of account kept in any department of the government of Canada, shall, in all courts established by the parliament of Canada and in all legal proceedings, civil and criminal over which the parliament of Canada has legislative authority, be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded, if it is proved by the oath or affidavit of an officer of such department that such book was, at the time of the making of the entry, one of the ordinary books kept in such department that the entry was made in the usual and ordinary course of business of such Department, and that such copy is a true copy thereof. Q. 48-49 Vict. Cap. 48.

### VI. BY PROCEEDINGS IN CRIMINAL PROSECUTION.

97. The clerk of the Police Court being called as a witness in a civil suit was asked to state the contents of a criminal information. Objected to on the ground that the prosecution in question was not terminated and cited 32-33 Vic., Cap. 30, Sec. 58. Objection overruled. *Kennedy & O'Meara*, 7 L. N. 407, S. C. R. 1884.

### VII. COMMENCEMENT DE PREUVE *see* PAROLE.

98. In a dispute concerning a piece of land. *Held* that the testimony of the plaintiff's *auteur*, admitting that he had sold a portion of a lot of land to the defendant, will not be taken as a commencement of written proof, entitling the defendant to produce verbal evidence of ownership. *Lecompte & Laflamme*, 9 Q. L. R. 140, S. C. R. 1883.

### VIII. DOCUMENTARY.

99. *Law of amended in certain cases, see* C. 44 Vic., Cap. 28.

(1) II<sup>d</sup> Dig. 307-145.

(2) 1675 C. C.

## IX. IN ACTION EN SÉPARATION DE CORPS.

100. Under no circumstances can the defendant be examined as a witness in an action en séparation de corps to prove the plaintiff's case. *Ducharme & Loyselle*, 27 L. C. J. 145, S. C. 1883.

## X. IN APPEAL.

101. Petition was filed, asking for the dismissal of the appeal, on the ground of acquiescence. The petition was supported by affidavits, which were met by counter affidavits on the part of the appellant. Application to cross examine the parties who made the affidavit, and deponents ordered to appear for that purpose. *Hotte & Andegrave*, 25 L. C. J. 227, Q. B. 1880.

XI. IN CRIMINAL MATTERS see C. 46 Vic., Cap. 35.

102. When goods are obtained by a fraud, the Court will permit, without previous notice to the accused, the proof of similar frauds, having recently been practised upon others in order to show the intent of the prisoner. *Queen vs. Durocher*, 12 R. L. 697, Q. B. 1882.

103. On the trial of a husband for neglecting to provide his wife with necessaries the evidence of the wife is admissible on behalf of the crown. *Regina & Maher*, 7 L. N. 82 Q. B. 1884.

## XII. NOTIFICATIONS.

Art 1209 of the Civil Code is repealed and replaced by the following:

"1209. Notifications, summonses protests and services, by which a reply is required, may be made by one notary whether the party in whose name they are made has or has not signed the deed. Such instruments are authentic and make proof of their contents until contradicted or disavowed but nothing inserted in any such instrument, as the answer of the party upon whom the same is served, is proof against him, unless it be signed by such party."

2. With the exception of the notifications, summonses, protest and services which precede, all other notifications, summonses, protests and services may be made by an ordinary notarial deed signed in the office of the notary or elsewhere; in such case it is sufficient for the notary to serve a copy of such deed upon the person to be so notified, summoned or protested at his domicile.

It is not necessary to deliver to the adverse party a copy of the *proces verbal* of services, such *proces verbal* may be drawn up and signed afterwards. Q, 47 Vict. Cap. 14, Sec. 1.

This act shall come into force on the day of its sanction. Sec. 2.

The first two lines of the French version of the first clause of the second paragraph of sect. 1 of the act. 47 Vict. Cap. 14, are replaced by the following:

"A l'exception des notifications, sommations, protestes et significations, qui précèdent, les autres notifications." Q, 48 Vict. Cap. 18, Sec. 1.

This act shall come into force on the day of its sanction. Sect. 2.

## XIII. Of.

104. *Agency of husband*.—The acceptance of a policy of insurance by a wife is sufficient proof of the agency of the husband to sign for it. *Mutual Fire Insurance Co., v. Desrousselles*, 5 L. N. 179, S. C., 1882.

105. *Bailiffs*.—On an action for a penalty under the license law the bailiff who served on the attorney of the defendant the inscription in the case, is not incompetent as a witness, as to the sale of the liquor by the defendant. *Renaud & Courtemanche*, 11 R. L., 103, C. C., 1881.

106. *Executors and persons sued in their quality*.—(following *Battersby & City of Montreal* (1). Where an assignee to the estate of an insolvent brings an action in his quality as such assignee.—*Held*, reversing the judgment of Superior Court (4 L. N., 170), that he can be examined on behalf of the parties he represents. *Fair & Cassels*, 2 Q. B. R., 1. Q. B., 1881.

107. A tutor pleading *es-qualité* for his pupil is competent as a witness in the case, and his position will affect his credibility only. *Thompson & Pelletier*, 7 Q. L. R., 59 S. C., 1881.

108. In an action against executors of a wife, one of the executors who is a legatee under such will, and also individually sued, is a party to the suit, and cannot be examined on behalf of the estate of which he is executor and defendant. *Ontario Bank & Mitchell*, 5 L. N. 154, S. C., 1882.

109. And though he may have renounced as such legatee, being a defendant individually and liable *solidairement* as having endorsed the note sued upon, he is still incompetent as a witness for the estate although he has pleaded separately. *Id.*

110. *Minor in actions for him*.—The question was as to whether the minor, in an action *en déclaration de paternité* on her behalf, could be examined. *Per curiam*.—*Jousse*, Com. Ord., 1667, p. 90, says the minor (*pubère*) may be interrogated on matters in his cognizance in causes instituted for him. I Pigeau 228 says that as the minor cannot alienate, his *aveu* cannot harm him, but at p. 236, he says: "*Mais on peut faire interroger celui des intérêts de qui il s'agit pour corroborer ou compléter la preuve qui résultera de l'interrogatoire subi par le tuteur ou l'administrateur*," and then he lays down the rule as *Jousse* has done at page 90. The minor may therefore be interrogated "*pour y avoir tel égard que de raison*." *Forget & Sénécal*. 4 L. N. 85. S. C. 1881.

111. *Notaries*.—A notary who has made a lease cannot be examined to proved what passed at the time the lease was executed, and which does not appear in the act itself. *Lemonnier & DeBellefeuille*, 5 L. N. 426, S. C. 1882.

(1) Not reported.

112. *Notarial Copies*.—The production of a copy of an authentic deed establishing that defendant signed the deed will not make proof of the signature of the defendant without proof also of his identity. *Côté & Labelle*, 12 R. L. 33, S. C. 1881.

113. *Action en déclaration de paternité* to which defendant pleaded amongst other things a *défense en fait*. The only proof of the paternity was an admission made by the defendant in a question put in cross examination of one plaintiff's witnesses. (1) *Held*, that under Articles 232, 233 and 241 of the Civil Code, proof by testimony, could not be admitted without a commencement of proof in writing, or when a legal presumption by facts admitted or established prior to the proof by parole, and that an admission such as that referred to, did not constitute a commencement of proof sufficient to let in verbal evidence. *Turcotte & Nacké*, 7, Q. L. R. 196, S. C. R. 1881.

114. *Physician*.—The plaintiff claimed \$16.50, for attendance on the defendant's wife previous to their marriage, which the defendant not only denied but disclaimed all responsibility for, supposing it to be true. Plaintiff replied that he attended her at defendants request, and defendant had since promised to pay for it all of which he desired to prove by his own oath under 2260 C. C. Sec. 7 (2). *Held* that his own oath was not sufficient to prove the fact of the services, which should be proved in the ordinary way, and then the oath of the plaintiff would suffice to prove the nature and duration of them. *Dansereau & Goulet*, 26 L. C. J. 123, & 11 R. L. 331, & 5 L. N. 133, C. C. 1882.

115. *Taxes being due*.—On the contestation of a municipal election in which the question of corrupt practices was raised.—*Held* that the production of the assessment roll was

(1) In default of the act of birth and of an uninterrupted possession, or if the child have been described either under false names or as being the child of unknown parents, the proof of filiation may be made by testimony; nevertheless this evidence can only be admitted where there has been a commencement of proof in writing or where the presumptions or indications resulting from facts then ascertained are sufficiently strong to permit its admission. 232 C. C.

A commencement of proof in writing results from the title deeds of the family, the registers and papers of the father and mother, from public and even private writings proceeding from a party engaged in the contestation or who would have had an interest therein had he been alive. 233 C. C.

An illegitimate child has a right to establish judicially his claim of paternity or maternity, and the proof thereof is made by writings or testimony under the conditions and restrictions set forth in arts 232, 233 and 234 241 C. C.

(2) For visits, services, operations and medicines of physicians or surgeons reckoning from each service or thing furnished. As regards whatever is sued within the year, the oath of the physician or surgeon makes proof as to the nature and the action of the services

sufficient proof that the taxes were due. *Auclair & Potrier*, 28 L. C. J. 231, C. C., 1884.

#### XIV. PAROLE.

116. The appellant was sued for \$481.75, balance claimed for goods sold and delivered by the respondent to appellant's brother, but which the respondents pretended had been done on order of appellant and charged to his account. The only proof the respondents were able to make of appellants' liability was by verbal evidence. The court below condemned the appellant to pay part of the amount. *Held* in appeal, reversing this judgment, that where a person becomes surety for the payment of goods furnished to another, that a writing is necessary to establish the responsibility. *Leduc & Prevost*, 28 L. C. J. 276, Q. B., 1871.

117. A creditor has the right to prove the existence of a partnership by parole evidence. *Lemire & Bourdeau*, 12 R. L. 362, S. C., 1880.

118. In a reserved case on a trial for manslaughter committed on the high seas.—*Held* that parole evidence was sufficient to prove that the vessel on which the crime was committed was a British vessel. *Regina & Moore*, 8 Q. L. R. 9, Q. B., 1881.

119. The declaration set up a sale by appellants to respondents from 500 to 800 barrels of refined pale seal oil, to arrive, at 57½ cents per gal. cash less 3 per cent with the provision that the appellant should have the right to ship 100 to 200 barrels additional to suit the vessel, the respondents to have the option of taking the same. The delivery of the oil was not to be made until the 1st August. That in accordance with the contract appellants shipped 778 casks of oil which arrived in Montreal 1st July 1880, that notice was given to respondents of its arrival and that L. M. agents of appellants, were instructed by respondents through their agent to store the same as it was not then required; that shortly after arrival and storage of the oil, respondents by their manager ordered appellants agents to sell the oil a 60 cents per gal.; that five barrels were sold at this rate, and that respondents then advanced the price; that they finally refused to take the oil altogether and, upon such refusal, the oil was sold at the current market price and a less of \$3094.71 made, for which action was brought. All these transactions were verbal and no writing could be produced as a commencement of proof. Plaintiffs by various questions tried to introduce parole, but the questions were all overruled. On appeal from the interlocutory at enquête the points urged were, that it was necessary under Art. 1233 C. C. to prove the memorandum in the first place, and secondly that proof of an acceptance without a delivery sufficed to take the case out of the rule of the article, and that acceptance could be proved by parole. Both of these pretensions were overruled in appeal, and the decision of the judge at enquête that where

it was admitted there was no writing, no proof by parole could be made of acceptance, was sustained. (1) *Munn & Berger*, 4 L. N. 218 and 6 L. N. 363 and 27 L. C. J. 349, Q. B. 1881.

120. A contract of *fidei commis* or deposit in trust, cannot be proved by parole when the amount exceeds fifty dollars. *Sweeny & Buchanan*, 5 L. N. 67, S. C., 1881.

121. Where goods had been purchased at judicial sale and allowed to remain in the possession of the debtor, *Held*, on opposition to another seizure that the verbal testimony of the purchaser is admissible, as against such other seizing creditor, to prove the transfer of the effects from the first purchaser to the transferee, opposant. *Senécal & Crawford*, 5 L. N. 256, and 2 Q. B. R. 120, Q. B., 1881.

122. Where the plaintiff, a bailiff of the Court, brought action on a claim which he had purchased and as to which there was some doubt whether it had been paid or not.—*Held*, that though the fact of payment could not be established by verbal evidence, the character of the claim, could and as it appeared to be within the definition of a litigious right action was dismissed. *Côté & Haughey*, 7 Q. L. R. 142, S. C. R., 1881.

123. Where an assurance company sued on a policy payable at death and the defendant contended that what he had agreed with the company's agents to take was a policy payable in twenty years. *Held*, that parole evidence of this was admissible. *Sun Mutual Insurance Co. & Bédard*, 5 L. N. 42, S. C. R., 1881.

124. Parole evidence is admissible to vary the order of endorsements to a negotiable instrument, or to show that the intention of the parties was that their liability would not follow that order. *Scott & Turnbull*, 6 L. N. 397, S. C. 1883, & *Léveillé & Daigle*, 2 Q. B. R. 129, Q. B. 1880.

125. But *held* by the same Court that an alleged agreement which is to destroy the legal effect of the order of endorsement according to the law merchant must be proved according to the rules laid down in 1234 and 1235 C. C. as to the necessity of a memorandum in writing. (2) *Whitfield & Macdonald*, 2 Q. B. R. 157 and 26 L. C. J. 69, Q. B. 1881 and 27 L. C. J. 165, P. C. 1833.

(1) Reversed in Supreme Court, June 1884, but not yet reported. Ed.

(2) In the Privy Council in the latter case both of these propositions were, curiously enough, affirmed in the following language.—It is a well established rule of law that the whole facts and circumstances attendant upon the making, issue and transference of a bill or note may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as makers or as endorsers, and that reasonable inferences derived from these facts and circumstances are admitted to the effect of qualifying, altering or even inverting the relative liabilities which the law merchant would otherwise assign to them. It is in accordance with that rule that the drawer of a bill is made liable in relief to the acceptor when the facts

126. In an action to set aside a deed of inventory and partage on the ground of fraud. *Held* that parole testimony was admissible on the part of defendant to repel verbal proof of fraud on the part of plaintiff. *Charlebois & Charlebois*, 26 L. C. J. 364, Q. B. 1882.

127. Proof by parole may be made of the acceptance of goods sold and delivered, though the amount claimed is over \$50 and where the purchaser offers to resell the whole or part of the goods, it is sufficient proof of such acceptance. *Lemonier & Charlebois*, 5 L. N. 196, S. C. 1882.

128. The existence of a *héritage dominant* not mentioned in the deed cannot be proved by verbal evidence. *Mondelet & Roy*, 7 L. N. 352 & M. L. R. 1 Q. B., 9, 1882.

129. Parole evidence will not be admitted to add to or vary the contents of a will, nor will the statements of those who witnessed the will be allowed to show that the intentions of the testator were other than what is expressed therein. *DeSalaberry & Faribault*, 11 R. L. 621, S. C. 1882.

130. Parole evidence of the extension of a contract of suretyship is inadmissible where the amount involved exceeds \$50. *Mansfield & Charette*, 6 L. N. 106, S. C. R. 1883.

131. Action of damages for non-delivery of four cases of phosphorous sold by defendant to plaintiffs on the 10th November, 1883. The price, \$232, was paid on the 11th November. The defendant pleaded that the sale was conditional upon the arrival of the phosphorous in Montreal, and it did not arrive. The plaintiff proved a rise in value of \$60, and the defendant proved by witnesses the allegations of his plea. The sale is proved by witnesses and the bill of sale receipted by the defendant. The bill says nothing of the condition attached by defendant to the sale that it should only be binding if the phosphorous arrived, and the question is submitted by plaintiffs that the evidence by witnesses of defendant that the sale was only conditional should be ruled out and rejected as inadmissible, as contradicting a written agreement. The Court is with the plaintiffs, and, holding this view, the plaintiffs should have judgment for these damages and costs of protest. *Rousseau & Evans*, 6 L. N. 204, S. C., 1883.

and circumstances connected with the making and issue of the bill sustain the inference that it was accepted solely for the accommodation of the drawer. Even where the liability of the party according to the law merchant is not altered or affected by reference to such facts and circumstances, he may still obtain relief by showing that the party from whom he claims indemnity agreed to give it him, but in that case he sets up an independent and collateral guarantee which he can only prove by means of a writing which must satisfy the statute of frauds.<sup>9</sup> It would appear from this that the general intention of the parties, or that there was error in the order of endorsement, may be shown by parole evidence, but a special agreement to hold free or to indemnify must be shown by writing. Ed.

132. Testimony cannot be received to vary the terms of a written instrument and where the defendant undertook by an agreement in writing to grind the green furnished by plaintiff in pure linseed oil, the defendant was not allowed to prove by witnesses that the plaintiff verbally requested him to use other materials. *Dominion Oil cloth Co. & Martin*, 6 L. N. 344, S. C. R. 1883.

133. Parole evidence will be allowed to prove the usual interpretation to be given to certain words in a charter party, when without such evidence these words would not have a plain meaning. *Caird & Webster*, 9 Q. L. R. 158, S. C. R. 1883.

134. Parole evidence is admissible to establish the actual order of endorsements on a note or bill, the instrument being only *prima facie* evidence. *Scott & Turnbull*, 6 L. N. 397, S. C. R. 1883.

135. Where a variance occurs between the application and the policy of insurance parole evidence will be admitted to prove the intention of the assured. *Vesina & Canada Fire & Marine Insurance Company*, 9 Q. L. R. 65, S. C. R. 1883.

136. The place mentioned in the agreement of Sale, as the place where it was made and executed, is not conclusive proof that it was made at that place, and parole testimony will be admitted to show that it was made somewhere else. *Riopelle & Fleury*, 12 R. L. 85, S. C. R. 1883.

137. The existence of a partnership, or that the partnership is simulated may be proved by witnesses. *Graham & Bennett*, 12 R. L. 448, S. C. R. 1883.

#### XV. PRIVILEGED COMMUNICATIONS.

138. On a charge of perjury alleged to have been committed in an affidavit made by the defendant in order to obtain a writ of *habeas corpus*, the counsel for the accused, plaintiff on the *habeas corpus* suit, was asked to prove the identity of the accused as the person who signed, and swore to the affidavit. *Held* that this was not a private or confidential matter, and further that the fact that the witness was also retained for the accused in the perjury case did not excuse him from answering. *Kavanagh Exp.* 7 L. N. 316, Q. B. 1884.

139. But communications between solicitor and client are privileged, and accordingly it was *held* that the managing director of a company could not be forced to produce letters written to him by the solicitor of the company, touching the suit in which said company was defendant. *Abbott Exp.*, 7 L. N. 318, S. C. R. 1884.

140. A discharge from a judgment debt of a commercial nature for an amount exceeding \$50, cannot be proved by witnesses. *Dominion Type Co. & Pacaud*, 10 Q. L. R. 354, S. C. R. 1884.

141. Parole evidence is admissible to prove the ownership of moveable property by a wife acquired since her marriage under

her marriage contract excluding community. *Hopital General & Gingras*, 10 Q. L. R., 230, S. C. R. 1881.

142. On the examination of an advocate—*Held* that the right of privilege as to what had been communicated to him by his friend did not extend to a conversation in the presence of another party which had nothing of the character of secrecy about them, and could not be considered confidential. *Bushman & Andrews*, 12 R. L. 332, S. C. R. 1883.

#### XVI. PROOF OF PAYMENT.

143. Plaintiff sued for an amount which he alleged ought to be to his credit in the Bank, defendant. The Bank filed a note which plaintiff had endorsed for \$200, but on which plaintiff, asserted \$100 had been paid by the maker, and referred to a pencil memo on the note, which read, "*Cent piastres couvert par hyp.*". The Bank, on the contrary, made proof that they had received nothing on account from any source. Judgment dismissing action, confirmed. *Noisieux & La Banque St Jean*, 5 L. N. 360, S. C. R. 1882.

#### EXAMINATION.

I. OF WITNESSES, *see* WITNESSES.

#### EXCEPTIONS.

I. DECLINATORY.

144. Declinatory exception on the ground that the contract of hiring was not made as alleged in this Province, but in the Province of Ontario, and that the service, which was a personal service in Montreal, did not bring the defendant before the Court, so as to give it jurisdiction (1). The defendant relied on *Gossett & Robin. Per curiam*.—*Gossett & Robin* was an action *pro socio*, where the service depended upon the domicile of the party, and it was pretended that in such a case as that where the action was not purely personal as it is here, that the defendants, being absentees and having their principal place of business in Jersey, where their property might have been liable to division under the judgment of the Court, could be called in by advertisement, because they had property in Gaspé. Such a case as that is easily distinguishable from this. Here the action is purely personal as required by Art. 34 of the Code of Procedure, not mixed as it was there, and the terms of the judgment in that case leave no doubt of the ground upon which it rested. A personal action however follows the person, and a personal service in Montreal, in such a

(1) I. Dig. 53, 395.

case, gives us under article 34, jurisdiction over it. *Lafrance & Jackson*, 4 L. N. 60, S. C. 1881.

## EXCEPTIONS TO THE FORM—See PROCEDURE.

## EXCHANGE.

I. OF IMMOVEABLES WITH GARANT CONSTITUTES HYPOTHEC, see HYPOTHEC.

## EXECUTION.

- I. AGAINST LANDS.
- II. AGAINST RAILWAYS.
- III. AGREEMENT TO SUSPEND.
- IV. CONTEMPT OF COURT.
- V. CONTEMPT OF PROCESS.
- VI. DELAY TO EXECUTE.
- VII. EXEMPTIONS.
- VIII. FIAT FOR.
- IX. FOR COSTS WILL NOT BE GRANTED WHILE APPEAL PENDING.
- X. LAPSE OF.
- XI. LIABILITY OF DEFENDANT.
- XII. MUST GIVE CREDIT FOR MONEYS PAID ON ACCOUNT.
- XIII. OF IMMOVEABLES.
- XIV. OF LANDS.
- Second seizure.*
- XV. PAYMENT OF MONEYS LEVIED.
- XVI. SEIZURE OF BANK STOCK.
- XVII. SUSPEND BY APPEAL, see APPEAL.
- XVIII. VENDITIONI EXPONAS.

### I. AGAINST LANDS.

The said Code is amended by adding thereto after article 711 the following articles :

"711. a. The sale of immoveables situate in this province, made by liquidators in virtue of sect. 15 of the federal Act 45 Vict. Cap. 23, and followed by the formalities hereinafter mentioned, has the effect of a sheriff's sale.

"711 b. A copy of the deed of sale and the certificate from the registrar mentioned in article 965 of this code must be deposited with the liquidator.

"711 c. Notice of such deposit, with mention of the names of those who possessed the immoveables during the last three years, must be given during one month in the Quebec Official Gazette, and be read and posted at the place and in the manner mentioned in article 962 of this Code, on the second Sunday preceding the delays for bidding hereinafter mentioned.

"711 d. During the fifteen days following the last insertion of the notice in the Official Gazette, any creditor of the company in liquidation and any person having hypothecary or real rights upon the immoveables sold, have the right to offer an increase over the purchase price mentioned in the deed of sale, provided such increase be at least one-tenth of the whole price, and that the bidders offer besides to refund to the purchaser his costs and lawful disbur-

sements, and give him for that purpose security in the ordinary manner or deposit a sum sufficient for that purpose in the discretion of the court or judge, reserving the subsequent completion of the precise amount.

"711 e. Any other creditors of the company, and any other persons having hypothecary or real rights upon the immoveables sold, may in like manner, and under the same conditions, outbid upon the first increase and may continue outbidding each other, provided that such subsequent increased bid be not less than twentieth of the purchase price, over and above the costs and lawful expenses.

"711 f. The purchasers may however keep and retain the immoveable at the amount of the highest bid legally offered." Q 48 Vict. Cap. 22, Sect. 14.

### II. AGAINST RAILWAYS.

145. Railways subsidized by the Province under the Quebec Railway Act, 1869, are liable to seizure and sale by ordinary process of law. *Wason Manufacturing Co. & Lewis & Kennebec Railway*, 7 Q. L. R. 330, S. C. R. 1880.

146. Following *Corporation of Drummond & South Eastern Railway Co.* (1). Held that railways may be seized and sold like other property in execution of a judgment. *Hochelaga Bank & Montreal, Portland and Boston Ry Co.*, 4 L. N. 333, S. C. 1881.

### III. AGREEMENT TO SUSPEND.

147. Plaintiff having seized the moveables of defendant under a judgment agreed to release the things seized on receipt of notes endorsed by a person mentioned in the agreement, at twelve, eighteen and twenty-four months. The notes were furnished and the seizure withdrawn, but before the maturity of the notes, plaintiff seized money belonging to the defendant in the hands of *tiers-saisis*. Defendant pleaded the agreement which was in writing. Held to suspend the execution of the judgment till the notes fell due, notwithstanding verbal evidence that it was only to apply to the moveables then under seizure. *Mackay & Fletcher*, 4 L. N. 374, S. C. 1881.

### IV. CONTEMPT OF COURT.

148. A defendant who induces a bailiff charged with a writ of execution against him not to seize his goods and effects, but to accompany him to the plaintiffs for the purpose of effecting a settlement, and in the interval between the bailiff leaving the place and returning again to make the seizure, removes part of the goods will be declared to be in contempt with the Court under Arts. 782 C. C. P. & 2273 C. C. and will be imprisoned in the common gaol until he satisfies the amount of the debt, interest and costs. *Ross & O'Leary*, 6 L. N. 174, S. C. 1833.

## V. CONTEMPT OF PROCESS.

149. It appeared that on the merits of a rule taken against the opposant, on the 27th Dec. last, the plaintiff obtained judgment against the defendant for the sum of \$434.93 due for rent. He took out an execution against the *meubles meublant* the premises leased, and it was now charged against the opposant that he fraudulently, and without motives, claimed the property seized by his opposition, which was on the 28th April 1881, dismissed with costs, and costs taxed against the opposant, amounting to \$77.05, in favor of the plaintiff. Thereupon the plaintiff took out a *venditioni exponas* to sell the moveables seized and could not find them, and he charged that B had concealed, hidden and diverted the goods and refused to deliver them to the guardian, with the intent to defraud plaintiff and evade the judgments against the opposant and defendant, and was in contempt of this Court. Plaintiff therefore asked that B be declared to be in contempt of Court, and imprisoned until he had paid \$7.55, balance due on the original judgment, \$154, costs on the original action, \$4, for subsequent costs, \$9.20, for additional costs on the execution, \$77.05, costs on the opposition.—*Held* on the evidence that there was no proof of a contempt having been committed. *Perrault & Charbonneau*, 5 L. N. 204, S. C. 1882.

## VI. DELAY TO EXECUTE.

150. The delay for execution is fifteen days from the date of the judgment, and in cases in review, the date of the judgment is the day on which judgment in review is received at the place where the fresh judgment was rendered, and is then registered as the judgment in the case. *Huot & Gadbois*, 12 R. L. 57, S. C. 1881.

## VII. EXEMPTIONS.

Whereas it is advisable to exempt from seizure one half of the wages of laborers; Therefore; Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Hereafter, wages due to Laborers shall be liable to seizure one for a proportion not exceeding one half.

2. The word, "Laborer" shall apply only to those who work and are paid by the day, by the week, or month, (*operarius*).

3. The present act shall come into force on the days of its sanction, Q 44-45 Vic. Cap. 28.

Paragraph 5 of article 556 of the Code of Civil Procedure is repealed and replaced by the following.

"5. Two draught horses, or oxen, one cow, two pigs, four sheep and their fodder for thirty days, together with one plow, one harrow, one working sleigh, one tumbrel, one hay cart, with its wheels, and the harness necessary for farming purposes."

2. This act shall have no retroactive effect. Q 45 Vict. Chap. 34.

151. The defendant being seized claimed exemption of certain carpenters' tools on the

ground that they were the tools of his trade. The proof was to the effect that he was skilled as a carpenter, and was often employed as a carpenter, though not regularly. For some four or five years previous to the seizure he had been employed as a day laborer in a saw mill, getting a little more than he would have earned on account of his skill with tools. *Held* that the tools could not be considered exempt. *Noel & Laverdière* 7 Q. L. R. 367, S. C. R. 1881.

152. Contestation by defendant of the declaration of *tiers saisi* who stated that in his quality of executor of the will of the late M., he had engaged the defendant as travelling tutor to young M., a minor, and the tutor (the defendant) and the pupil were then in Europe for the purpose of the latter's education. For this the tutor was receiving a salary of \$1000 a year, payable half yearly in advance. That on the 15th July 1879 there was due to defendant under this engagement \$500, which he had paid to defendant's sister, under an arrangement made to that effect before the departure, and on the 15th January 1880, there would be due \$500 more. Defendant contested on the ground that the money was *insaisissable* under Art. 628 (1) of the Code of Procedure, by which the salaries of school teachers are exempt from seizure. *Held* that the remuneration was in question did not come under the terms of the Art. as defendant was not a school teacher within the meaning of that provision. *Lafricain & Villeneuve*, 4 L. N. 54, S. C. 1881.

153. A lady's dress described in the *procès verbal* of seizure as a ball dress, and admitted to be such, is exempt from seizure under Art. 556. C. C. P., which says. "The debtor may select and keep from seizure the ordinary and necessary wearing apparel of himself and his family. *O'Dowd & Brunelle*. 4. L. N., 79. S. C., 1881.

154. The plaintiff having a judgment against the defendant seized in the hands of the furnishee a ball dress belonging to defendant. Defendant claimed the dress to be exempt as wearing apparel. *Held* that a ball dress seized in the hands of the dress maker and worth \$80 could not be considered "ordinary and necessary wearing apparel" within the meaning of those words. *Sharply & Doutre*. 4. L. N. 185. S. C., 1881 & 27. L. C. J. 25 & 6. L. N. 37. Q. B., 1883.

155. A sum awarded as damages by judgment of the Civil Court for a personal wrong is of its nature exempt from seizure and execution. *Maurice & Desrosiers*. 12. R. L. 654 C. C., 1884.

156. The provisions of 38 Vic. Cap. 12, which subject a portion of the salaries of public employees to seizure do not apply to the salary of school teachers under the control of the boards of school commissioners, and that under Art. 628. C. C. P., their salary is exempt from seizure. *Lovejoy & Campbell*. L. N. 399, & M. L. R. 1. S. C. 77, 1884.



## VIII. FIAT FOR.

157. To a writ of execution *de bonis* by the plaintiff the defendant filed opposition on the ground that in the *fiat* for the writ the day of return had been left in blank, and also in the entry book of executions the day of return had been omitted. Opposition dismissed. *De Bellefeuille & Pollock*, 25 L. C. J. 104, S. C., 1881.

IX. FOR COSTS WILL NOT BE GRANTED WHILE APPEAL PENDING See COSTS.

## LAPSE OF.

158. An execution will become null by the lapse of the delay, notwithstanding the consent of the defendant that it should be suspended, and an opposition founded on such nullity is good. *Denaut & Pratt*, 7, L. N. 415, C. C. 1884.

## XI. LIABILITY OF DEFENDANT.

159. Where the defendant is left in possession of the things seized and fails to produce them when called upon by the guardian, he will be held in contempt of Court and will be imprisoned unless he pays the value or claim of the plaintiff. *Courville & Bourdrias*, 8 L. C. J. 165, S. C. R. 1883.

XII. MUST GIVE CREDIT FOR MONEYS PAID ON ACCOUNT.

160. Where the plaintiff omitted to give credit for moneys received on account.—*Held* that the defendant was entitled to file an opposition to the sale for more than the amount due. *Martin & Labelle*, 7 L. N. 174, S. C. 1884.

## XIII. OF IMMOVEABLES.

Article 671 of the Code of Civil Procedure is amended, by replacing the first paragraph by the following;

"Immoveables under seizure, that are held in free and common socage, or otherwise than *en roture* or *en franc alleu roturier*, when they are not situated in a parish civilly erected, and those which are situated in the district of Gaspé, under whatever tenure they are held, can only be offered for final bidding and adjudication at the registry office for the registration division in which they are situated." Q. 47 Vict. Cap. 17, Sect. 1.

## XIV. OF LANDS.

161. *Second seizure*.—The sheriff for the district of St. Francis seized, on the 29th March 1878, the lands of one S. at the suit of the respondent. On the 21st July following, S. made an opposition to annul the seizure. The sale of the lands seized was suspended by this opposition which was returned into the Prothonotary's office by the sheriff on the 13th August 1878 together with the writ under which the seizure had been made. On the 28th March 1879 the sheriff seized under a

writ of execution issued by the appellants the same lands previously seized at the instance of the respondent. To this second seizure the respondent made an opposition to annul the sale on the ground that the first seizure was still pending, and that a second seizure of the same lands could not take place until the first was disposed of. Appeal from judgment maintaining this opposition and declaring the second seizure void. *Per curiam*.—From the terms of Art. 642 it is obvious that the existence of a first seizure can prevent a second seizure only when the writ on which the first seizure has been made is still in the hands of the sheriff who is ordered to note as an opposition for payment on the first writ any subsequent writ which he may receive. This is not possible after the sheriff has disposed himself of the writ and *procès verbal* of seizure, and has returned them into Court according to law. In the present case as the second writ was placed in the hands of the sheriff long after the day fixed for the sale was passed, and the whole proceedings suspended by the return of the first writ, the appellants had no means of compelling the sheriff to advertise the sale of the lands of the defendant on the first seizure, nor to fix a day for the sale, except in accordance with the precept of the second writ, which directed him to seize and proceed to the sale after the usual advertisements, and therefore, articles 642 & 643 of the Code of Procedure do not apply. (1) Judgment reversed. *Fuller & Fletcher*, 25 L. C. J. 93 & 4, L. N. 96 & 1, Q. B. R. 102, Q. B. 1880.

## XV. PAYMENT OF MONEYS LEVIED.

Art. 601. of the said Code is amended by adding after the word "sheriff" the words "or bailiff" four days after the sale. Q. 48 Vict. Cap. 20 Sect. 10.

## XVI. SEIZURE OF BANK STOCK.

162. Where bank stock or shares is seized under a writ of execution notice should be given by the Bailiff charged with the execution that the shares held by him in such and

(1) When the Sheriff has seized an immoveable upon a defendant, he cannot seize it again at the suit of another creditor or of the same creditor for another debt, as long as the first seizure subsists; but he is bound to note any subsequent writ of execution, as an opposition for payment upon the first writ, and in such case the first seizure cannot be abandoned, nor suspended, except in consequence of oppositions, applicable as well to the seizing creditor, as to those whose writs of execution have been noted as oppositions, or with their consent, or by an order of a judge. 642 C. C. P.

In the event of the seizing creditor abandoning the seizure or receiving payment of his claim, the Sheriff is bound to continue the proceedings, in the name of the seizing creditor, and at the cost of the judgment creditor, whose writs have been noted, in order to satisfy the claims specified in the subsequent writs of executions, provided the seizure was made with all requisite formalities. 649 C. C. P.

such a company or bank have been taken in execution, and if this notice is not made and signed by the bailiff the seizure will be null. *Francis & Clement*, 12, R. L. 642, S. C. 1884.

### XVIII. VENDITIONI EXPONAS.

The Code of Civil Procedure is amended by adding after article 664 the following paragraph; "In the districts of Montreal and Quebec, such order shall be given by one of the judges administering justice therein; in the other districts, such order cannot be made except by the judge who resides in the district in which the opposition is to be produced, except in the absence of the judge, which absence shall be established by the certificate of the prothonotary of the Superior Court, or clerk of the Circuit Court, as the case may be. Such order is made only after the adverse party has been placed in *mord*, by notice duly served upon him, to appear before the judge, before whom the application for such order is to be made, which notice shall give one clear day and shall contain an indication of the day and hour of the appearance." Q. 47 Vict. Cap. 16 Sect. 1.

The provisions of this act shall not apply to the judicial districts of Gaspé (Gaspé and Bonaventure) Rimouski, Beauce and Chicoutimi. Sect. 2.

163. Plaintiff prayed for a writ of *venditioni exponas* on the ground that the bailiff charged with the execution of the writ of *fiert facias*, although he had observed all the legal formalities was prevented by sickness from making the sale. *Held* (1) that the plaintiff was not entitled to a *venditioni exponas* within the meaning of Article 663 (2) of the Code of Procedure so as to have the property sold after two advertisements. *Goselin & Naulin*, 7 Q. L. R. 283, S. C. 1881.

164. Motion to dismiss an opposition *afin de charge* on the ground that it was filed after the issuing of a writ of *vend-ex.* and for reasons anterior to the proceedings "by which the sale was stopped in the first instance." The first writ was stayed and returned for want of bidders and at the request of the plaintiff. Thereupon the plaintiff moved for a writ of *Vend-ex.*, which was granted, subject to the condition that the notice of sale under the writ so to issue should be "four months" in the same manner as upon the *fiert facias*. Accordingly a writ styled a *venditioni exponas* issued and requiring four months notice to be given of the sale, and the opposition in question was filed about three months before the day appointed for the sale. *Held* that the writ so allowed

[1] *Jodoin and Menard, Bouvier & Brush and Union Bank & Shortis* referred to and discussed.

[2] The writ of *Venditioni Exponas* orders the sheriff to proceed with the sale of the immovable or of the rent under seizure after a publication in French and in English at the church door on the third Sunday before the sale and two advertisements in the *Quebec Official Gazette* with the formalities prescribed by article 648, 663 C. C. P.

and dismissed was not a *venditioni exponas* (1) and motion to dismiss opposition dismissed. *Vidal & Demers*. 7 Q. L. R., 313. S. C., 1881.

### EXECUTIVE COUNCIL.

#### I. MEMBERS OF CANNOT BE IMPEADED BEFORE THE ORDINARY CIVIL TRIBUNALS.

165. The commissioner of Railways under the Quebec Railway Act 1880, being a member of the Executive Council of the Province represents the sovereign authority and cannot be impeaded before the Civil Courts of the province for an act performed by him in the discharge of his duties as such commissioner. *Molson & Chapleau*. 6 L. N. 222. S. C. 1883.

### EXECUTORS.

#### I. ACCOUNT OF.

#### II. LIABILITY OF.

#### III. PLEADING BY WHEN SUMMONED *en reprise d'instance*.

#### IV. POWERS OF.

#### V. REMOVAL OF.

#### VI. RIGHTS OF.

#### I. ACCOUNT OF.

166. Although a testamentary executor is not obliged to account to the heirs or legatees until the end of his administration, nevertheless when he gets placed in possession of all the property of the testator, and his appointment is for a considerable time, he should furnish them on their demand and at their cost, statements of account and allow them to examine the accounts, receipts, &c., but when he is sued for that purpose without previous notice he will not be liable for the costs. *Quinn & Fraser*, 10 Q. L. R. 320, S. C. R., 1884.

167. Nor is the executor who has been appointed to replace another obliged to account for the administration of his predecessor, from whom only or his heirs and successors an account of his administration can be demanded. *Ib.*

#### II. LIABILITY OF.

168. In an action against an executor to account,—*Held*, that executors are only

[1] When all the publications and advertisements required by law upon the first writ have been duly published and made the execution of a writ of *Vend Ex* cannot be stopped by opposition unless for reasons subsequent to the proceedings by which the sale was stopped in the first instance and upon a judges order. 864 C. C. P.

responsible for what they actually receive and are not jointly and severally responsible for each other's administration, but where they have without authority acted also as tutor to the minor, whose estate they administer they cannot charge interest on moneys expended in that capacity. *Miller & Coleman*, 25 L.C.J. 196, & 2 Q. B. R. 33, Q.B., 1881.

169. Nor are they liable in the absence of proof of fraud for more than the amount actually realized from property sold in the course of their administration. *Ib.*

170. Action against the executors of the last will and testament of one J. P., by three legatees *en reddition de compte* and the case came up on a *débat de compte* rendered by the defendants. *Held*, that joint testamentary executors who have taken undivided possession of the property of the succession are not only bound to render a joint account, but are obliged *solidairement* to the payment of the balance. *Hoffman v. Pfeiffer*, 7 Q. L. R., 125, S. C., 1881.

### III. PLEADING BY WHEN SUMMONED EN REPRISE D'INSTANCE.

171. Where a party summons executors, *en reprise d'instance* and files the will appointing them as such, he is not obliged to prove that they have accepted the position, if they have only pleaded a *défense en fait*, without specially denying that they have accepted. *Price & Hall*, 1 Q. B. R. 233, Q.B., 1881.

172. And where such executors have pleaded a *défense en fait* without complaining that there is already a judgment on a previous *demande en reprise d'instance* uncontested they cannot avail themselves of such irregularity in appeal. *Ib.*

### IV. POWERS OF.

173. By the third clause of her will. H. M., the testatrix, disposed of all her property, moveables and immoveables, in favor of her children as universal legatees. The legacy was subject to the extended powers of administration, conferred by the fifth clause of the will, (referred to in the statement of the case,) and also to the power to alter the disposition, in favor of the testatrix's children given by the same clause, to her husband H. L., the executor, and also by the will the executors were exonerated from the obligation of making an inventory, and rendering an account. H. L., in his quality of testamentary executor and administrator to the estate of the said H. M., endorsed accommodation promissory notes, signed by C. L., one of his children, and the "Molson's Bank" (respondant) as holder thereof for value, obtained judgment against both the maker and endorser. An execution was subsequently issued against H. L., *es-qualité*, and certain real estate of the late H. M., which he detained in his said capacity was seized and

advertised for sale. *J. D. L. et al.*, (the appellants) who were the only children of the defendant H. L. and his wife, opposed the sale of the property seized on the ground that the said property was *insaisissable*. *Held*, reversing the judgment of the court below, 12 R.L. 61, & 4 L.N. 86, & 5 L.N. 364, that the endorsements were not authorized by the will, and that the clause in the will, exempting the property of the testatrix from execution, was valid and must be given effect to. Art. 972, C. C. (1) *Lionais & Molson's Bank*, 10 S. C. Rep. 526, Su. Ct., 1885.

### V. REMOVAL OF.

174. An executor under a will made before the passing of the Civil Code may be removed from office for any of the causes stated in Art. 917 (2) of the said Code, and a sequestered appointed to administer the Estate of the testator until the appointment of another executor. *Howard & Yule*. 25. L. C. J. 229, & 4. L. N. 126. S. C., 1881.

175. Action for the removal of an execution on the ground of incapacity and unfaithfulness in the fulfilment of the duties of his office and especially in lending to his son in law the sum of \$12,938, without any security for the repayment of that sum at the time the loan was made, and for which he only received long afterwards hypothecary security said to be for the most part insufficient and illusory, and which he has since released contrary to the interests of the succession. It was further alleged that for many years defendant neglected to collect the interests on the loan, and that in acting thus he was guilty of fraud and shewed himself to be utterly incapable. Plea that defendant's administration so far from being disadvantageous to the succession had been extremely profitable, having in particular realized a profit of \$5,000 by the well timed sale of Bank of Montreal stock, a profit which the heirs would have lost if the sale had not then been made; that the plaintiff had already instituted an action *en reddition de compte* against him which was still pending, and which had been

[1] Although the motive of the prohibition to alienate be not expressed, and it be not declared under pain of nullity, or some other penalty, the intention of the party disposing suffices to give it effect, unless the expressions are evidently within the limits of mere advice. When the prohibition is not made for another motive, it is interpreted as establishing in favor of the party disposing, and his heirs, a right to get back the property. 972 C. C.

[2] If having accepted a testamentary executor refuse or neglect to act, or dissipate, or waste the property, or otherwise exercise his functions in such a manner, as would justify the dismissal of a tutor, or if he have become incapable, of fulfilling the duties of his office, he may be removed by the Court having jurisdiction. 917. C. C.

received; that the loan complained of was perfectly safe; that two of the plaintiffs had no interest in bringing the action; that the defendant personally was quite solvent. Most of the allegations as stated were proved and the demand *en destitution* was rejected. *Devine & Griffin*, 4 L. N. 61, S. C., & 25 L. C. J. 249, 1881.

176. And the Court will not remove an executor from office for an isolated act of maladministration when it is proved that he acted in good faith and that no loss is likely to accrue to the Estate from what he did and that the administration of the executor was in all other respects most satisfactory. *Id.*

177. The defendant was sued as sole surviving executrix of the will of the late J. R., in an action to have her turned out of the executorship and compelled to render an account of her executorship. The declaration charged that she had since her marriage been managing the executorship by attorney—namely by her husband—to whom in violation of law and of the will, she had given a power of attorney. The declaration accused the defendant of waste, improper charges against the plaintiff, for alleged expenditure and percentages; also it charged that the defendants had contrived bonuses to themselves on leases granted to people, not stating them to the plaintiffs in any way, so that plaintiffs only became aware of it within the six months next before the suit; that the defendants had made an improper lease of some of the real estate for a mere nominal rent when a large beneficial rent was procurable, and even offered for it, &c. On the evidence the demand was granted and defendant ordered to account. *Ross & Ross*, 5 L. N. 197, S. C. 1881, & 7 L. N. 65, Q. B. 1883.

178. The refusal of an executor to allow his co-executor to take an equal share in the management of the estate, his applying the proceeds of a cheque to other purposes than that for which his co-executor had signed it, his payment to himself of his own charges against the estate without the sanction of his co-executor, and his enmity to the universal legatee, are sufficient grounds of removal, under articles 917, (1) and 285 C.C. (2) *Seed & Tail*. 9 Q. L. R. 145. S. C. R., 1883.

179. Where a testamentary executor has been removed from office by a final judgment he will not subsequently to such judgment be permitted to inscribe in Review from a judgment dismissing an action brought by him in his quality of executor. *Ross & Sweetney*, 7 L. N. 346, S. C. R., 1884.

[1] See *infra*.

[2] The following persons are also excluded from tutorship, and even may be deprived of it, when they have entered upon its duties.

1. Persons, whose misconduct is notorious;  
2. Those whose administration exhibits their incapacity or dishonesty. 285 C. C.

## VI. RIGHTS OF.

180. An executor has a right to claim interest on all interest bearing debts paid by him in the interest of the minor to prevent the sacrifice of the real estate. *Miller & Coleman*, 25 L. C. J. 196, Q. B., 1881.

## EXEMPTIONS.

I. FROM EXECUTION, *see* EXECUTION.

II. FROM TAXATION, *see* TAXATION.

## EXHIBITS,—See PROCEDURE.

I. CONSTITUTIONALITY OF ACT IMPOSING STAMPS ON.

II. PRODUCTION OF.

I. CONSTITUTIONALITY OF ACT IMPOSING STAMPS ON.

181. By the Quebec Act, 43 & 44 Vict., cap. 9, sec. 9, it is enacted, "That a duty of ten cents, shall be imposed, levied and collected, on each promissory note, receipt, bill of particulars, and exhibit, whatsoever produced, and filed before the S. Ct., the C. Ct., or the Magistrates Ct., such duties payable in stamps." The Act is declared to be an amendment and extension of the Act 27 & 28 Vict., cap. 5. "An Act for the collection by means of stamps of fees of office due, and duties payable to the Crown, upon law proceedings, and registrations." By sec 3, S. S. 2, "the duties levied are to be deemed to be payable to the Crown." The appellant obtained a rule *nisi* against the prothonotary of the Superior Court of Montreal, for contempt in refusing to receive and file an exhibit unaccompanied by a stamp as required by the Act. Upon the return of the rule, the Attorney General of the Province obtained leave to intervene and show cause. *Held*, reversing the judgment of the Court of Queen's Bench, (1) that the Act imposing the tax in question was *inter vires*, the tax being an indirect tax, and the proceeds to form part of the consolidated revenue fund of the Province for general purposes. *Reed & Mousseau*, 8 S. C., Rep. 408, Su. Ct., 1883, & 8 L. N., 50 P. C., 1885.

II. PRODUCTION OF.

182. The intervening party taking up the *fait et cause* of the defendants pleaded to the action. The articulations of facts had been filed and the case was inscribed. The plaintiff produced an enquête without previous notice an exhibit alleged in his declaration.

(1) 5 L. N. 397.

The intervening party when the case came up for hearing moved to reject the exhibit as having been irregularly filed. *Held* that as the intervenant had produced his pleas and articulations he was too late to take exception to the production of the exhibit. *Filion & Corriveau*. 7 Q. L. R. 66. S. C., 1880.

## EXPENSES.

### I. OF ELECTIONS *See* ELECTION LAW.

## EXPERTS.

### I. REFERENCE TO ACCOUNTANTS.

183. In an action to recover moneys alleged to have been paid to respondent as his share of certain supposed profits which appellant alleged afterwards proved to be losses the Court may without the consent of the parties refer the matters in dispute to an accountant, when the Court is of opinion that the evidence adduced is contradictory and unsatisfactory. *Canada Paper Company & Bannatyne*. 26 L. C. J. 124. Q. B., 1881.

## EXPLOSIVES SUBSTANCES.

### I. ACT RESPECTING *See* C. 48 and 49 VIC. CAP. 7.

## EXPROPRIATION.

### I. COSTS WHERE CONTESTED.

### II. FOR RAILWAYS.

### III. POWERS OF MUNICIPAL CORPORATIONS WITH REGARD TO.

### I. COSTS WHERE CONTESTED.

184. In a matter of expropriation, where \$600 was awarded by judgment in excess of that offered by the Commissioners, the attorney's bill was taxed as in a first class case in the Superior Court. *Grace in re*, 5 L. N. 119, S. C. 1881.

### II. FOR RAILWAYS.

185. Proprietors have not the right to retain the ownership, of land, marked on plans, as provided, by-law, for railway purposes, and they have no alternative but to accept the Compensation finally awarded, and decided upon. *Bank of Hochelaga & Montreal Railway Company*, 12 R. L. 575, S. C. 1882.

186. But if the proprietors cannot refuse to transfer their property, and give up pos-

session of it to the railway, much less can they do so, or reclaim possession of the property after they have voluntarily allowed the Company to take possession and to lay their track on it, and the only thing they can legally ask is the compensation which is supposed to represent it, and the only recourse which the creditors of the proprietors have, is against such compensation. *Ib.*

### III. POWERS OF MUNICIPAL CORPORATIONS WITH REGARD TO.

187. Article 407, C. C. (1) does not empower a Municipal Corporation to expropriate the property of individuals for public purposes, without first determining a just and equitable indemnity. *Dupras & Corporation d'Hochelaga*, 12 R. L. 35, S. C. 1881.

## EXTRADITION.

### I. AMENDING ACT, C. 45 VIC. CAP. 20.

### II. EVIDENCE OF OFFENCE.

### III. GROUNDS OF.

### IV. LAW OF.

### V. LIABILITY TO.

### VI. PROOF OF THE OFFENCE.

### VII. WARRANT OF ARREST.

### II. EVIDENCE OF OFFENCE.

188. An affidavit sworn to before a commissioner of the United States, proved to be a magistrate having authority in the matter according to the law where taken, may be received, if properly proved, as evidence against the prisoner on proceedings for extradition, and provided there has been adduced legal evidence applicable to the case and prisoner has thereon been committed for extradition, a judge on an application for *habeas corpus* will not be disposed to weigh or appreciate that evidence with a view of giving the prisoner the benefit of a doubt as to its preponderance. *Phelan Exp.*, 6 L. N. 261, Q. B., 1883.

### III. GROUNDS OF.

189. The petitioner had been arrested in Quebec on the 16th June, 1884, on a warrant of arrest under the Extradition Act of 1877, for an alleged forgery, and applied to be liberated on the ground that he was not guilty of any offence for which his extradition might be demanded. The proof established that the accused had signed as President of the Second National Bank of New York eight cheques for amounts varying from \$95,000 to \$200,000, and bearing various dates from 25th

[1] No one can be compelled to give up his property except for public utility, and in consideration of a just indemnity, previously paid. 407 C. C.;

September, 1883, to 13th May, 1884. None of these cheques were given for the legitimate business of the bank, but were for the benefit of the accused, who made false entries in the books of the bank and issued "slips" and "tickets" for the bank's employees in order to conceal his defalcations. Moreover, the bank was to the knowledge of E. in an insolvent condition when these cheques were given, and in the evening of the 13th of May, 1884, E.'s resignation as president was handed to the directors, the last of the cheques in question having been drawn by him on that day and paid before three o'clock by the bank. In addition to this evidence the prosecution produced true copies of five indictments of the grand jury of the city and district of New York, returning true bills of forgeries in the first, second and third degrees under the laws of New York. It was pretended by the prosecution that these indictments were admissible as evidence as "statements on oath" under the extradition Act of 1877, sec. 9. (1) *Held* that these indictments could not be accepted as *prima facie* evidence of the commission of an extraditable offence, and that the acts proved in the present case did not constitute a forgery. *Eno exp.* 7 L. N. 360. S. C., 1884.

#### IV. LAW OF.

190. On a demand for *habeas corpus* by a person committed for extradition on a charge of passing counterfeit money.—*Held* that since the Imperial order in council of 28th December, 1882, published in the *Canada Gazette* of 3rd March 1883, the operation of the Imperial extradition Act of 1870 has been suspended in Canada, quoad the extradition of fugitive offenders from the United States, and the Dominion Act. 40. Vic. Cap. 25, is applicable in such case to the extent at least of the extradition arrangements in force with that country. *Phelan Exp.* 6. L. N. 261. Q. B., 1883.

191. And an alleged irregularity in the proceedings for his arrest cannot on an applica-

[1] Depositions or statements taken in a foreign state on oath or on affirmation where affirmation is allowed by the law of the state, and copies of such depositions or statements, and foreign certificates or of judicial documents stating the fact of conviction may if duly authenticated be received in evidence on proceedings under this act.

2. Such papers shall be deemed duly authenticated if authenticated in manner provided for the time being by law or if authenticated as follows;

(a) If the warrant purports to be signed by or the certificate purports to be certified by, or the depositions or statements or the copies thereof purport to be certified to be the originals or true copies by a judge, magistrate or officer of the foreign state;

(b) And if in every case the papers are authenticated by the oath or affirmation of some witness, or by being sealed with the official seal of the minister of justice or some other minister of the foreign state; of which seal the judge shall take judicial notice without proof. C. 40 Vict. Cap. 25.

tion for *habeas corpus* avail a prisoner committed for extradition. It is sufficient that being under arrest before proper authority a case has been made out against him to justify his commitment. Ib

#### V. LIABILITY TO.

192. On a demand for extradition, the warrant was in the following words:—That J. C. E., late of the city of New-York, in the state of New-York, one of the United States of America, is accused of the crime of forgery and of the felonious utterance of a forged authority and order for the payment of money, within the jurisdiction of the state of New-York, one of the United States of America, to wit: for that he, the said J. C. E., on the seventeenth day of January, in the year of Our Lord, one thousand, eight hundred and eighty-four, of the said city of New-York, with intent to defraud and with intent to conceal a misappropriation of money, feloniously did draw, make and sign a certain order and authority for the payment of money, commonly called a cheque, dated at New-York aforesaid, the day and year last aforesaid, for the sum of one hundred and twenty five thousand dollars for and on account of the Second National Bank of the city of New-York, and falsely pretending to so draw, make and sign said cheque as president of said Bank, the whole without lawful authority or excuse; And further that the said J. C. E. afterwards to wit: at the said city of New-York, on the day and year last aforesaid, feloniously did, offer, utter and dispose of and put off a certain order and authority for the payment of money, commonly called a cheque, dated at New York aforesaid, on the day and year last aforesaid for the sum of \$125,000 with intent to defraud, drawn, made and signed for and on account of the said Second National Bank of the city of New-York, by said J. C. E. who falsely pretended so to draw, make and sign said cheque as president of the Bank, the whole without lawful authority or excuse, and with intent to conceal a misappropriation of said last mentioned sum, delivered the said Bank cheque to G. & R., the payees therein named, from whom he obtained thereby money, value or credit in the sum of \$125,000 named in the said bank cheque, and who thereupon endorsed the said bank cheque and by means thereof, thereupon at said city of New-York, obtained from said Second National Bank the sum of \$125,000, named in the said bank cheque and thereupon J. C. E. with the intent to defraud and to conceal the said misappropriation of the money of the said Second National Bank, did make and cause to be made false entries in the accounts and book of accounts of said Second National Bank, whereby it was made to appear that the said sum of \$125,000 had been loaned or advanced by said Second National Bank to said G. & R. and F. S. S.; whereas in truth no loan or advance has been made to them

or either of them by said Second National Bank, but the said sum of money had been misappropriated by said J. C. E. and did with like intent to defraud and conceal said misappropriation of money wilfully omit to make true entries of the said bank cheque, or of the said sum of money for which said bank cheque was so drawn in the accounts or book of accounts of the said Second National Bank, kept by him or under his direction, he, the said J. C. E., well knowing the said last mentioned cheque to have been so drawn, made and signed. *Held*, maintaining the action for *habeas corpus* and dismissing the demand for extradition, that where the demand for extradition is for forgery, the offence must be that recognized as forgery by the Imperial Extradition Act of 1842; that according to that Act, forgery is the making or altering of writing so as to make the writing purport to be the act of some other person which it is not, and not the making of an instrument which purports to be what it really is, but which contains false statements and therefore false entries in the books of a bank by its cashier do not constitute the offence of forgery according to the Extradition Act of 1842. *Eno Exp.*, 10 Q. L. R. 194, S. C. 1884.

#### VI. PROOF OF THE OFFENCE.

193. Copies of the indictment and of true bills found by the grand jury of the State of New York cannot be admitted in Canada as *prima facie* proof of the offence on a demand for extradition. *Eno Exp.*, 10 Q. L. R. 194, S. C., 1884.

#### VII. WARRANT OF ARREST.

194. Prisoner was arrested in Quebec on

the warrant of M. C. in his quality of Justice of the Peace for the Province, charging certain persons, among whom the name of the prisoner was not included, with bringing and having in their possession in Canada, money which had been feloniously stolen and obtained by them in New-York. On a petition for *Habeas Corpus*, the prisoner swore that he was first arrested on a steamship, in the harbor of Quebec and asked to look at the warrant. On doing so he found his name was not included in it and informed the constables. On looking over his baggage and papers, they became convinced that that was the case and deliberated him with an apology. Next morning they returned and on the strength of a telegram which they produced again arrested him on the same warrant. The petition for *Habeas Corpus*, on this ground was granted, but as soon as the prisoner was liberated he was again arrested on a new warrant issued in Montreal and endorsed by the Judge of Sessions in Quebec. On a second petition for *Habeas Corpus*.—*Held* that under the consolidated Statute of Lower Canada. Ch. 95, S. 11, (1) that after having been liberated under the act of *Habeas Corpus*, a prisoner could not be arrested again on a new warrant, charging him with the same offence. *Eno exp.* 10 Q. L. R. 165, Q. B. 1884.

(1) "No person delivered or set at large upon *Habeas Corpus*, shall at any time thereafter be again imprisoned or committed for the same offence by any authority whatsoever, other than the legal process and order of the Court wherein he is bound by recognizance to appear, or other Court having jurisdiction of the cause.

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I. OF BAILIFF.

1. The fees of a bailiff in a suit, except where they are taxed against the adverse party and distraction given to the attorney, belong to the bailiff himself and if the client pays them to his attorney, he will be liable to pay them again to the bailiff. *The v. Green*, 7 L. N. 7, C. C. 1883.

II. OF GUARDIAN.

2. Where an official guardian is changed for a voluntary guardian, the former cannot refuse to transfer the things seized until his fees are paid. *Durocher & Sarault*, 7 L. N. 96, S. C. 1884.

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3. In the case of the *Atalaya* (II Dig. 337-18),  
the experts made their award and on an  
objection by an applicant, it was held that  
damages for detention under the Foreign  
Enlistment Act must be restricted to the  
natural and proximate consequences of it,  
and damages remote and consequential would  
not be allowed. *The Atalaya in re*, 7 Q. L. R.  
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HYPOTHEC GIVEN IN GOOD FAITH BY PURCHASER.  
VII. SALE OBTAINED BY.

#### I. ACCEPTANCE OF SUCCESSION INDUCED BY.

4. A. who had a claim against the insolvent estate of Dr B. purchased a right of redemption, which Dr B. had at the time of his death in a certain piece of land and in order that B. et al, (the respondents, Dr B's. children) who were perfectly solvent, should accept the succession of Dr B. A caused, to be prepared a deed of Assignment by a Notary of this right of redemption to B. et al, who a few days after the death of their father, had been induced for a sum of \$50 to consent to receive this right of redemption. The Notary, who prepared the deed without the knowledge of B. et al, returned it to A. telling him that he did not like to receive the deed because he believed that in signing it, B. et al, made themselves heirs of Dr B. and besides he believed that if B. et al, knew that in signing the deed they accepted the succession of their father, and were responsible for his debts, they would not sign. Another notary residing at a distance was sent for by A. to whom he gave the deed as prepared, and the notary then went to the residence of B. et al, read the deed to the parties, and without any explanation whatever passed and executed the deed of cession whereby B. et al, became responsible for the debts of their father. There was also evidence that B. et al, had done some conservatory acts and acts of administration for their mother, but it was not proved that in any of these transactions they had taken the quality of heirs. *Held* that the acceptance of an insolvent succession, is null and of no effect, when it is the result of deceit and corrupt practices, artifices and fraud. That as A. in this case obtained the signatures of B. et al, to the deed in question by fraud the latter should not be burdened with the debts of their insolvent father. *Ayotte & Bouché, 6 L. N. 26 & 3 Q. B. R. 123, Q. B. 1882, & 9 S. C. Rep. 460, Su. Ct. 1883.*

II. BILLS OBTAINED BY FRAUD MAY BE VOID  
EVEN IN THE HANDS OF A TRANSFEREE BEFORE  
MATURITY.

5. When the transfer of a note by endorsement is made before maturity, but the evidence shows that the note was obtained from the maker by fraud and that the holder was aware of the fraud, the case does not come within the rule laid down in C. C. 2287, (1) the onus of showing that he is in good faith falls upon the holder. *Bélanger et Baxter, 6 L. N. 413, Q. B. 1883.*

#### III. CONTRACTS INDUCED BY.

6. In an action to set aside an inventory and partage on the ground of fraud.—*Held* that the fact that a minor was represented at an

inventory and partage by her tutor, her father, who had a conflicting interest, was not ground for setting aside the partage at the instance of a third party, when the minor who has since become of age makes no complaint in respect thereof. *Charlebois & Charlebois, 26 L. C. J. 364, Q. B. 1882.*

7. And where such action is brought by a member of the family who formally consented thereto to the burden of proof is on the plaintiff to show that his or her consent was improperly obtained, and parole testimony is admissible on the part of the defendant to repel verbal proof of fraud adduced by the plaintiff, and in the case in question there was no fraud proved. *Id.*

#### IV. IN TRANSACTION.

8. Action to set aside a deed of transaction by which the plaintiff desisted from a judgment in her favor and ceded and transferred to the defendant all her rights in the succession of her brother. Plaintiff alleged *crainte*, error and fraud. She contended that she was intimidated by her husband, who was on the point of leaving the country with another woman, into passing this deed, with the object on his part of procuring for him the money to run off with the other person, and that the money was not paid to her but to her husband. *Held* that the allegation that she did not get the money was disproved. She got the money and gave it to her husband, and having done so, she could not have the deed set aside without bringing back all she had received under the terms of the deed. *Charlebois & Charlebois, 26 L. C. J. 378, Q. B. 1882.*

V. SALE ANNULLED FOR DOES NOT AFFECT  
HYPOTHEC GIVEN IN GOOD FAITH BY PURCHASER.

9. The question was whether the annulling of a sale for simulation or fraud with respect to the rights of creditors of the vendor, affected the hypothec given by the purchaser to a lender in good faith. The sale by P. V. to C. N. of date 26th May 1880, was annulled for fraud and also the donation of date 28th May 1880 by C. N. to J. C. A. Should the hypothec by A. to R. D. who was in good faith suffer the same fate? It was so held by the Court below according to the maxim *resoluto jure dantis resolvitur jus accipientis*. *Held* that the annulling of a sale for fraud does not invalidate a hypothec given previously by the purchaser to a lender in good faith. *Normandin & Normandin, 5 L. N. 250 & 27 L. C. J. 45, S. C. R. 1882.*

#### VI. SALE OBTAINED BY.

10. A sale obtained by fraud is null and an action in rescission will lie not only against the person committing the fraud, but against the third owner in good faith, to whom Art. 2085

C. C. (1) does not apply. *Lighthall vs. Christian*, 11 R. L. 402, C. C. 1882.

FREEMASON.

FRAUDULENT PREFERENCE See  
SECRETION.

(1) The notice received or knowledge acquired of an unregistered right belonging to a third party and subject to registration, cannot prejudice the rights of a subsequent purchaser for valuable consideration, whose title is duly registered, except when such title is derived from an insolvent trader. 2085 C. C.

I. To FAISELY CALL A PERSON WHO IS A CANDIDATE AT AN ELEOTION IS A LIBEL.

11. The plaintiff, a French Roman Catholic on the eve of an election, in which he was a candidate, was falsely charged, in the defendant's newspaper, with being a freemason. The charge was calculated to injure and did injure the plaintiff's candidature. *Held* that he was entitled to damages and \$400, allowed. *Lareau & La Minerve*, 6 L. N. 156 and 27 L. C. J. 337, S. C. 1883.

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## GAMBLING TRANSACTION.

- I. ACTION FOR MONEY LENT IN.  
 II. ATTACHMENT OF MONEY DUE FOR BETS.  
 III. WHAT IS.

## I. ACTION FOR MONEY LENT IN.

1. Le demandeur après une nuit passée à jouer aux cartes avec le défendeur et un tiers se retira du jeu vers les sept heures du matin. Quelques instants après le défendeur ayant perdu ce qu'il avait d'argent sur lui et étant endetté de \$25 envers le tiers se leva de table, emprunta du demandeur qui était resté dans le même appartement, la somme de \$50 avec laquelle il paya ce qu'il avait emprunté, il continua à jouer et perdit le reste. L'action du demandeur fut un *assumpsit* pour argent prêté. Le défendeur plaida par exception, et prétendit que c'était une dette de jeu qui tombait sous l'article 1927 C. C. et que, par conséquent, le demandeur n'avait pas d'action. *Held*, Qu'un prêt d'argent fait par une personne qui a cessé de jouer, à un des joueurs qui continue peut-être recouvré en loi. Que toute personne qui n'est pas intéressée dans le jeu est considérée comme tiers auquel l'article 1927, C. C.(1), ne s'applique pas. *Amesse & Latreille*, 7 L. N. 326, C. C., 1884.

## II. ATTACHMENT OF MONEY DUE FOR BET.

2. The plaintiffs were judgment creditors of R. H. B. P. made certain bets with the garnishee on the result of the English Epsom Derby, which he won. The plaintiffs attached the amounts so due, and the garnishee declared in Court that they owed the money and intended to pay the bets. *Held*, that a judgment creditor has the right to seize in the hands of third parties the amount of bets which they have lost to the defendant and which they are ready and willing to pay. *McGibbon & Brand*, 7 L. N. 228, S. C. 1884.

## III. WHAT IS.

3. A sale of goods for future delivery admittedly made without any intention on the part of the seller to deliver, or on the part of the purchaser to receive delivery of, and on the understanding that the parties should settle with each other at the period fixed for delivery by the one party paying to the other the difference between the price of sale and that which might prevail at the period fixed for delivery, is a mere gambling transaction and therefore illegal, null and void. *Shaw & Carter*, 26 L. C. J., 151, S. C., 1876.

(1) There is no right of action for the recovery of money or any other thing claimed under a gaming contract or a bet. But if the money or thing have been paid by the losing party, he cannot recover it back unless fraud be proved. 1927 C. C.

"Where a person had transactions with a stock broker, for the purchase and sale of stocks on his account, and it was perfectly understood between the parties that the operations were fictitious, and that there would be no delivery of the stocks, but merely a settlement of the differences of price.—*Held* that this was a gambling transaction, and that the consideration of a cheque given to the broker in the course of such transactions was illegal, and an action will not lie to recover the amount thereof. *Fenwick & Ansell*, 5 L. N. 290, S. C. 1882.

5. A customer deposited money with a broker to be used as "margin" in buying stock for speculative purposes. No delivery of the stock so purchased was intended, the broker's instructions being to realize as soon as a small profit could be made. In consequence of a declination in value, and the margin being thereby exhausted, the broker at one time sold stock at a loss. *Held*, that no action would lie by or against the broker, under such circumstances, the contract being a gaming contract. *Allison & McDougall*, 27 L. C. J. 355 and 6 L. N. 93, S. C. 1883, & *MacDougall & Demers*, (1) S. C. & Q. B., 1886.

## GAME LAWS.

- I. ACT CONCERNING *See* Q. 45 VICT, CAP 15; AND Q. 47 VICT CAP 25; AND Q. 48. VICT CAP 12.

## GAOLS.

- I. EMPLOYMENT OF PRISONERS *See* C. 48-49 VICT, CAP 81.  
 II. MAINTENANCE OF *See* Q. 46 VIC, CAP 15.

GARDIEN—*See* GUARDIAN.GARANTIE—*See* SURETYSHIP.

## GAS.

- INSPECTION OF *See* C. 47. VICT, CAP. 35 AND C. 48-49 VICT, CAP 69.

GAZETTE OFFICIELLE—*See* OFFICIAL GAZETTE.GIFTS—*See* DONATION.

- (1) Unreported.

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I. SALE OF *See* SALE.

## GOOD WILL.

I. INCLUDES TRADE MARK.

II. SALE OF.

I. INCLUDES TRADE MARK.

6. Case of *Thompson & Mackinnon*. (11 Dig. 342-2) confirmed in Appeal 26 L. C. J., 321. Q. B. 1882.

## II. SALE OF

7. The defendant sold to the plaintiff, by deed of date February 5, 1880, a certain stock-in-trade and business which he had been carrying on, together with the property in which it was situated, and among other things stipulated as follows: 50. *Le dit J. J. sous une pénalité de quinze piastres courant pour chaque infraction, promet et s'engage à ne point tenir à son compte soit magasin, hangard ou comptoir, en la paroisse de Ste-Jeanne de Neuville, en autant et aussi longtemps que le dit M. T. B. tiendra magasin dans la maison et autres bâties que le dit M. J. J. lui vend ce jour, cependant il sera loisible au dit M. J. J. de vendre de la farine aux marchands et boulangers de Ste-Jeanne de Neuville ou des autres paroisses, de commercer sur les bois de c rde, de le vendre à qui que se soit à Ste-Jeanne de Neuville, et au cas où il plairait au dit M. J. J. de payer l'achat de son bois de corde par les moyens de bons il sera alors obligé et s'engage à les envoyer au magasin du dit M. T. B., pourvu que ce dernier lui paie une commission semblable et aussi élevée que celle payée par les autres marchands du lieu.* The defendant set his brother in law up in business in premises immediately opposite the former ones in which the plaintiff now was, and drew on him the bows or orders for goods in payment of his cord wood, instead of on the plaintiff, who had gone into partnership with another. Held that the clause quoted did not contain a sale of the goodwill, and plaintiff having entered into partnership with another, the defendant was under no obligation to send the new firm his business. *Bertrand & Julien*, 7 Q. L. R. 268, S. C. R. 1881.

8. Action for breach of contract arising out of sale of goodwill of the business. The defendant by deed of sale of date 11th March, 1882, been then a flock manufacturer, sold with promise of warranty to plaintiff certain

moveables in the factory of defendant, No. 564 William street, together with the goodwill of business of wool-flock manufacturing, which defendant had carried on for some time. The consideration was \$4,000. It was well understood between the parties that the defendant should not on any account for the space of five years from date of deed enter into the manufacture of, or sale or business or be interested in wool flock to the detriment and injury of said plaintiff. The complaint was that since the said date the defendant had continued to manufacture flock to the damage of plaintiff. The pretension of the defendant was that he had neither sold nor manufactured flock. 1. The article manufactured by defendant was obtained by a process different from that producing flock; 2. The article produced by defendant was composed of different elements; 3. It was not called flock; 4. It was much more costly than flock; 5. It served an entirely different purpose from flock. The defendant admitted that flock and woolbatts or carded shoddy are two articles resembling each other a great deal, and that in passing them from hand to hand it is difficult to distinguish them. *Per curiam*.—The Court is satisfied that the article produced by the defendant, comes from the article produced by the plaintiff, and that defendant cannot produce his article, call it woolbatts or what you please, without producing the article made by plaintiff, the business of which and the good will of which was sold by the defendant for a sum of \$4,000. The Court therefore thinks that the action of plaintiff is well founded. *Cattell & Cooper*, 6 L. N. 202, S. C., 1883.

## GOVERNMENT.

I. DEPARTMENT OF MARINE FISHERIES, *see* C. 47 VICT., CAP. 19.

II. DEPARTMENT OF RAILWAYS AND CANALS, C. 46 VICT., CAP. 5.

III. DEPARTMENT OF THE INTERIOR, *see* C. 46 VICT., CAP. 6.

## GRAIN CARGOES.

I. SHIPPER'S LIABILITY OF, *see* MERCHANTS' SHIPPING.

GREYFIER.—*See* PROTESTNOTARY.

## GRÈVE.

I. DE SUBSTITUTION, *see* SUBSTITUTION.

GROSSES RÉPARATIONS.—*See*  
LESSOR & LESSEE.

**GUARANTEE—See ACTION EN GARANTIE, SURETYSHIP, WARRANTY.**

**GUARDIAN.**

- I. DUTIES OF.
- II. FEES OF.
- III. LIABILITY OF.
- IV. RIGHTS OF.

**I. DUTIES OF.**

9. A guardian who has left the effects seized, in the possession of the defendant will be held responsible for them, even if they have been disposed of in the interval by authority of justice, in a case against a person other than the defendant, but residing with him. *Courville & Bourdrias*, 28 L. C. J. 165, S. C. R. 1883.

10. And a guardian who produces the effects seized will be liable for their deterioration or any damage caused to them by his fault during his guardianship, and will not be discharged therefrom, unless he makes good to the plaintiff the value of such deterioration. *Ibid.*

11. A guardian of goods seized in execution is not guilty of contempt of Court for having refused to comply with an interlocutory judgment appointing a new guardian and ordering him to deliver the goods seized to such new guardian, when before service upon him of such judgment the first guardian has been served with a number of *saïste arrêtés*, after judgment attaching these goods in his hands. *Merchants Bank of Canada & The Montreal P. & B. Railway Company*, 6 L. N. 229, S. C. R. 1883.

**II. FEES OF.**

12. Where an official guardian was appointed and afterwards the defendant obtained permission to appoint a voluntary guardian in his place, and served an order on him to deliver up the things, which he refused to obey without being first paid his fees a rule

for contempt was made absolute against him. *Durocher & Sarault*, 7 L. N. 96, S. C. 1884.

13. A guardian furnished by the defendant is not entitled to fees, and cannot be taxed for them on the proceeds of the sale. *Whithead & Dubeau*, 10 Q. L. R. 162, S. C. R. 1884.

**III. LIABILITY OF.**

14. A guardian who has not received regular notice of the day, hour, and place of sale is not in fault for not producing the effects when called upon to do so, and where he invokes such excuse at the time of sale, though insufficient if he has received notice, it cannot be made the foundation of a condemnation to imprisonment, in default of producing the things or paying the money. *McManamy & Boisclair*, 10 Q. L. R. 134, S. C. R., 1884.

**IV. RIGHTS OF.**

15. The plaintiff was appointed guardian of certain moveables on the defendant in a cause. An opposition having been filed by the wife of the *saïst* all the things were sold by her pending the opposition. Some of them having been purchased by the present defendant. The guardian himself was cognizant of the sale of the things and assisted in delivering them, supposing that the opposition would be maintained. The opposition having been on the contrary dismissed the guardian was called upon to produce the things and then took a revendication to recover them from the purchaser. *Held*, distinguishing the case from *Moisan & Roche* (1), that the guardian could not recover. *Duperré & Demas*, 8 Q. L. R. 333, S. C., 1882.

16. A guardian of moveable property under seizure cannot prevent the sale of the things until he is paid his fees of guardianship. *Mouette & D'Amour*, 12 R. L. 418, C. C., 1883.

**GUNPOWDER.**

- I. STORAGE OF, *see* LICENSE LAW.

(1) II Dig. 346-14.

## H

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## HABEAS CORPUS

## I. IN CIVIL CASES.

## II. RIGHT TO.

## I. IN CIVIL CASES.

1. A writ of *habeas corpus* will lie to liberate a defendant arrested under a writ of *capias* where want of jurisdiction in the Court issuing the writ of *capias* or of authority to the bailiff to make the arrest appears upon the face of the proceedings. *McNeice & Ross*. 9 Q. L. R. 64. S. C., 1882.

## II. RIGHT TO.

2. The Court of Queen's Bench has no revisory power, except by way of appeal, over the proceeding of the Superior Court, and it cannot, on an application for *habeas corpus* examine into proceedings of the Superior Court in order to see whether a warrant committing a person to jail for *rebellion a justice* in a civil suit, requires him to pay in order to get his discharge, a sum greater than he was condemned to pay by a judgment of the Superior Court. *Pollock Exp.* 5. L. N. 293 and 2 Q. B. R. 60. Q. B., 1881.

3. The Court cannot interfere on a writ of *habeas corpus* with the question of costs. *Jones Exp.* 1. Q. B. R. 100 Q. B., 1881.

4. And if a warrant of commitment shows that there was a conviction the Court will not grant a *habeas corpus* for a mere omission or defect in the recital in the commitment of the terms of conviction, unless the conviction is brought before the Court by means of certiorari or it is shown why this cannot be done. *Ib.*

5. A girl, aged 15, was placed in the household of a farmer by the manager of the "Knowlton Distributing Home." Soon afterwards the manager applied for a writ of *habeas corpus* in order to procure the restoration of the girl to her charge. The farmer, by an amended return to a writ, declared that he did not detain the girl, who was at liberty to go where she pleased. The girl herself, when examined by the Judge, stated that she was happy and contented where she was, and would prefer remaining there to returning to the Home. No specific reasons were stated in support of the application except that it was for the welfare and benefit of the child that she should be removed, and that the farmer with whom she had been placed was about to go to the United States. The latter statement was contradicted by affidavit. *Held*, that under the circumstances the Court would not, on a writ of *habeas corpus*, the object of which is the protection of personal liberty, make any order of a nature to exert coercion, but would leave the minor to follow her own inclination in the matter. *Regina & McConnell*. 5 L. N. 386. S. C., 1882.

6. The petitioner applied for a *habeas corpus*, alleging that the petitioner is informed and has

every reason to believe that a warrant for his apprehension as a fugitive has been issued in the district of Montreal and has been entrusted for execution to the high constable of the district, Mr. A. B. That petitioner has been detained in custody at the city of Quebec, since the thirty-first ultimo, on two separate unfounded charges of having brought stolen money into Canada. That petitioner is advised that he has a right to be brought under the said warrant of apprehension, as a fugitive, before any one of your honors who is authorized to act judicially in extradition matters at the city of Quebec, where petitioner now is, and that the said warrant should command and he is informed does command the said high constable for the district of Montreal, charged with the execution thereof to bring your petitioner before the judge who issued the said warrant, or some other judge under the Extradition Act 1877 to be further dealt with according to law; that your petitioner has not committed any offence against the laws of Canada, and he is advised and believes that he has not committed any offence for which he can be lawfully extradited or surrendered to the United States of America as a fugitive from justice. *Held* that under the circumstances that the law may be imperative on the Judge to grant the writ, and that the officer charged with the warrant was bound to return it before the Judge as soon as the writ was served upon him. *Eno exp.* 10 Q. L. R. 177, S. C. 1884.

## HABITUAL DRUNKARDS.

I. LICENSE LAW AMENDED WITH RESPECT TO, *see* Q. 48 VIC., CAP. 8.

## HARBOUR COMMISSIONERS.

## I. POWERS OF.

7. Action to revendicate a quantity of wood The defendants pleaded that the wood had been placed on the wharves under their control and as it obstructed the thoroughfare they had removed it as authorized by their by-laws Nos. 42 & 43, and claimed a right of retention for their disbursements until the payment thereof. *Held* that by the evidence there was an undoubted obstruction and the defendants had a right to remove it. Plea maintained. *Sleeth & The Harbour Commissioners*, 4 L. N. 2, S. C. and 126, S. C. R. 1880.

## HARBOR DUES.

## I. RIGHT TO WHARFAGE.

8. Question as to whether the owner of a wharf to which a vessel is moored but the cargo

of which is delivered into lighters (and not on the wharf) is entitled to wharfage as well as to moorage. The defendant, master of the *CZAR*, a vessel engaged at Liverpool, by charter party to carry 500 tons of salt to Quebec, and there deliver it on to lighters at such wharf as should be indicated by the consignees was sued for seven days moorage at \$6.25, and wharfage of 503 tons of salt at 13 cents per ton. Defendant offered \$37.50, being moorage for six days and for the rest pleaded that he was not liable to pay wharf on cargo which did not touch the wharf, and that in any case the wharfage was payable by the owner of the cargo and not by the boat. The evidence as to a custom of trade that the boat should pay both was conflicting. *Held* in Review, reversing the judgment of the Superior Court, that wharfage was not due on a cargo transferred to lighters and not delivered on the wharf, and that a custom of trade to the contrary to be binding should be uniform, universal, known and established by long usage. *Forest & Berenstein*, 8 Q. L. R. 262, S. C. R., 1882.

### HEIRS—See SUCCESSION, WILLS.

#### I. ACTION BY FOR SHARE OF CONTINUED COMMUNITY.

##### II. PLEADING IN ACTION BY.

#### I. ACTION BY FOR SHARE OF CONTINUED COMMUNITY.

9. In an action against the second husband of Plaintiff's mother, after the death of the latter, for a division of the property of the continued community.—*Held* that in consequence of the failure of the mother to make an inventory of the property of the community, which had existed between her and their father, who died on the 14th June 1832, intestate leaving the plaintiffs, then minors, as his heirs at law, and her remarriage with defendant, without a contract of marriage on the 19th March 1840, a tripartite community of property was formed between defendant, the mother and the plaintiffs; *Almour vs. Ramsay*, 26 L. C. J. 167, S. C., 1881.

10. And the inventory made by the defendant, after the death of his wife, although made ostensibly of the community between him and his wife, was a good and legal inventory of the tripartite community, notwithstanding, there was not really any property belonging to the first community. *Ib.*

11. And the fact that the plaintiffs had not up to and at the time of the making of the inventory, made any demand of continuation of community, did not prevent their making such demand by the action. *Ib.*

##### II. PLEADING IN ACTION BY.

12. Petitory action claiming a quarter of the property described as belonging to the

heir of her father. Defendant pleaded that he had acquired all the property of plaintiff's mother, who had sold it to him, one half as belonging to her, and the other half as tutrix to the plaintiff and her brother; that the plaintiff's mother was since dead, and the plaintiff was bound to guarantee him in the possession of the property. Plaintiff answered that she had renounced the succession of her mother, and defendant replied specially that Plaintiff, on the contrary, had meddled in the succession, and had appropriated some of the property of the succession, and the renunciation was consequently without effect. He also demurred to the answer of plaintiff on the ground that the renunciation should have been set up in the declaration, and not by special answer. *Held*, dismissing the demurrer, that the plaintiff was not obliged to set up her renunciation of the succession and the special answer was perfectly good. *Guay & Caron*, 7 Q. L. R. 217, S. C., 1881.

### HIGH SEAS.

I. TRIAL OF CRIMES COMMITTED ON, *see* CRIMINAL LAW.

### HIGHWAYS—See MUNICIPAL CORPORATIONS, ROADS.

### HIRE—See LEASE.

I. OF WORK, *see* MASTER AND SERVANT.

### HOLIDAYS—See VACATION.

### HOMESTEADS.

I. PROVISION FOR, *see* Q. 45 VICT., CAP. 12.

### HOMOLOGATION.

I. OF REPORT OF DISTRIBUTION, *See* DISTRIBUTION.

### HORSES.

I. DISEASE IN.

II. LIABILITY FOR ACCIDENTS TO IN STALLS, *see* DAMAGES.

## I. DISEASES IN.

13. In a case arising out of the sale of horse,—*Held*, that rot or tick in a horse, constitutes a *vice redhibitoire* and a breach of warranty. *Drolet & Laferrière*, 12 R. L. 359 Q. B., 1879.

14. And the disease called *tactisse* constitutes a *vice redhibitoire*. *Gosselin & Brisebois*, 12 R. L. 366, S. C., 1879.

15. But the disease called *boitière intermittente* is not a *vice redhibitoire*. *Lenoir & Mandeville*, 12 R. L. 369, C. C., 1880.

## HOUSE OF COMMONS.

I. ACT TO PROVIDE FOR THE APPOINTMENT OF A DEPUTY SPEAKER, *see* C. 48-49, VICT., CAP. 1.

II. REPRESENTATION IN, *see* C. 45, VICT., CAP. 3.

## HOUSES.

LEASE AND HIRE OF, *see* LESSOR AND LESSEE.

HUSBANDS.—*See* MARRIAGE, &c.

I. LIABILITY OF WHEN CARRYING ON BUSINESS IN NAME OF WIFE.

16. A *capias* was issued against the defendant, B. F. B., on the ground of sequestration. It was alleged that the defendant had been doing business, at St. Johns, P. Q., under the name of B. & Co., and had made promissory notes in the name of the said firm, on which there was a balance due of \$704.67 that he had secreted his effects, &c. The defendant in his petition to quash the *capias*, denied the making of the notes, but did not produce any affidavit to show that the signature was forged. He pretended that he was merely acting under a power of attorney from the registered firm of B. & Co. A. H. who constituted the registered firm of B. & Co., was examined, and stated that she signed the notes, and that the signatures were in her own handwriting. *Held*, that the person registered as the firm of B. & Co. was merely a *prête nom*, for the defendant, who was the actual owner, of the business. *Capias* maintained. *Graham & Bennett*, 6 L. N. 298, S. C., 1883.

HUISSIERS—*See* BAILIFFS.

## HYPOTHEC.

## I. ACTION ON.

II. BY A PERSON WHOSE TITLE IS AFTERWARDS ANNULLED.

III. CANNOT BE TRANSFERRED FROM ONE CLAIM TO ANOTHER.

IV. DELAISSEMENT.

V. DISCHARGE OF.

VI. ILLEGAL REGISTRATION OF.

VII. LIABILITY OF LEGATEE FOR.

VIII. LIABILITY OF TIERS DÉTENTEUR.

IX. MISREPRESENTATIONS IN *See* DAMAGES.

X. ON PROPERTY TRANSFERRED.

XI. PRIORITY OF.

XII. PROCEEDINGS UNDER WHEN OWNERSHIP IS UNCERTAIN.

XIII. PROOF OF INSOLVENCY OF MORTGAGOR.

XIV. REGISTRATION OF.

XV. RIGHTS OF CREDITOR.

XVI. RIGHTS OF TIERS DÉTENTEURS.

XVII. WHAT IS.

## I. ACTION ON.

17. In an action in declaration of a hypothec against the *tiers détenteur* of an immoveable property the defendants pleaded that when they purchased they were shown a statement between their immediate vendor and plaintiff, which plaintiff had acknowledged to be correct and had signed, and which showed a balance due of \$1442.43 and which had since been paid. *Held* on demurrer to be a good plea.—*Dubuc & Kidston*, 7 Q. L. R. 43, S. C., 1881.

18. And in another case.—*Held* that in a hypothecary action it is not necessary to specifically allege but it is necessary to prove that the person creating the hypothec was proprietor and had the power to grant the mortgage. *Union Bank & Nutbrown*, 10 Q. L. R. 287, S. C., 1884.

II. BY A PERSON WHOSE TITLE IS AFTERWARDS ANNULLED.

19. The question was whether the annulling of a sale for simulation or fraud with respect to the rights of creditors of the vendors affected the hypothec given by the purchaser to a lender in good faith. The sale by P. N. to C. N. of date 26th May, 1880, was annulled for fraud, and also the donation of date 28th May 1880, by C. N. to J. C. A. Should the hypothec by A. to R. D. who was in good faith suffer the same fate? It was so held by the Court below according to the maxim, *resoluto jure dantis, resolvitur jus accipientis*. *Held* that the annulling of a sale for fraud does not invalidate a hypothec given previously, by the purchaser to a lender in good faith. *Normandin & Normandin*, 5 L. N. 250, and 27 L. C. J. 45. S. C. R., 1882.

III. CANNOT BE TRANSFERRED FROM ONE CLAIM TO ANOTHER.

20. In 1859 N. B. gave to F. G. three obligations with hypothec on the property sold in the cause and in 1870 transferred to him in payment among other things of these obligations constituted rents due to him by diffe-

rent persons amounting to 88 annually or a capital of \$1468. By this latter deed G. reserved the rights of hypothec previously granted and renewed them to guarantee the payment of the constituted rents. In 1878, G. sold the rents to the defendants for \$1347 payable in \$200 cash and annual payments of \$200, for which he transferred to defendant also the hypothecary rights he had acquired against N. B. In the meantime N. B. had given to defendant, in consideration of a life rent, the very property he had thus hypothecated. G. died and the property was sold in the hands of defendant. The certificate of the registrar returned as due the hypothecs which N. B. had given to G. and as they were prior to the rights of N. B. for his life rent the prothonotary collocated the executors of G. who took all that was remaining after the payment of the preferential claims and left nothing to B. for his life rent. B. contested the certificate on the ground that the hypothec which he had given to G. were not a guarantee of the price of the rentes, for which he had only that given subsequently by the defendant, and as the property had in the meantime passed to defendant the executors of G. could only rank after him B. *Held*, that a hypothec cannot be transferred to a later claim to the prejudice of intermediate creditors. *Dorval & Bourassa*, 8 Q. L. R. 218, S. C., 1882.

21. And where on the constestation of a collocation it appeared that the contestants transferred to the plaintiff collocated certain hypothecary claims without reserving or mentioning the priority which they set up for other claims retained by them, the effect of which was to lead the plaintiff to believe that the claims so transferred to him would rank first. *Held*, under article 2048 C. C. (1) that contestants had forfeited their right of preference. *McCall & Bonacina*, 5 L. N. 215, S. C., 1882.

#### IV. DELAISSEMENT.

22. Opposition alleging—that the defendant having been sued hypothecarily as the *détenteur actuel* of the lot of land seized in this cause made a *délaissement* in due course of law; that the opposant was appointed curator to the *délaissement* so made; and that by reason of the premises the proceedings for the sale of the said lot on the part of the present plaintiff ought to have been taken against the opposant as curator to the *délaissement*, and not against the defendant who had made the *délaissement*. Plaintiff contested on the ground that it did not appear that the oppo-

(1) The creditor who expressly or tacitly consents to the hypothecation in favor of another of the immoveable hypothecated to himself, is deemed to have ceded to the latter his preference, and in such case, an inversion of order takes place between these creditors, to the extent of their respective claims; but in such manner as not to prejudice intermediate creditors, if there be any. 2048 C. C.

sant was sworn as curator, as well as other objections against the appointment of the defendant. *Held*, that although the *délaissement* leaves the *delaissant* the right to resume the property at anytime before the sale on paying the plaintiff suing, and also the right to receive any surplus that the sale of the land may produce, after the payment of the legal claims, yet that the *delaissant* cannot be considered a *légitime contradicteur* in any proceeding to bring the property to sale, and a creditor having a judgment against the *delaissant* ought to cause it to be declared executory against the curator before causing the real estate *delaissé* to be seized. *Couture & Fournier*, 7 Q. L. R. 27, S. C. R. 1880.

#### V. DISCHARGE OF.

23. R. sold to appellants a piece of real estate. They paid a portion of the price, leaving \$20,000 secured on the property, payable in ten years, with interest. This balance R. gave to McGill College, and appellants accepted the transfer. Appellants then sold the immoveable to B., who bound himself personally to pay the debt, and the property remained hypothecated to secure the debt. B. then exchanged the property with the Seminary for another property; and as the property coming from appellants was mortgaged as well for the balance of the original price (the \$20,000 made over to McGill College) as for the extra price B. agreed to pay, B. hypothecated to the Seminary the property they gave him in exchange. B. then sold to S. the property he had acquired from the Seminary. The Seminary became parties to the last deed, and discharged B. of his personal liability to them, and accepted S. in his stead. Subsequently the rights of McGill College devolved on one C. who notified the seminary of the transfer. Interest on the \$20,000 fell due, and as it was not paid by any of the parties personally liable, C. sued the Seminary hypothecarily. The Seminary paid the debt, and were subrogated in the rights of C. They then sued the appellants who pleaded as an answer to the demand the discharge of B. by the Seminary. The question was as to the effect of this discharge. *Held* that the action of the Seminary should be maintained. *Reford & Les Ecclésiastiques du Séminaire de Montréal*, 6 L. N. 27, & 27 L. C. J. 1, Q. B., 1882.

#### VI. ILLEGAL REGISTRATION OF.

24. The plaintiff purchased a property in the parish of Boucherville, on the 21st October 1879, and on the 29th registered his deed. On the 14th August 1880 the defendant registered a hypothec which he claimed to have on the property. *Held* that the defendant was liable to pay to plaintiff \$240 damages caused thereby and that the registration was null and void and ordered to be erased. *Daigneault & Demers*, 26 L. C. J. 126, S. C. 1881.

## VII. LIABILITY OF LEGATEE FOR.

25. Action by the transferee of a hypothec, granted to one, J. P., deceased on an immoveable property in the City of Montreal, against the executors of the Estate of the mortgagor also deceased, the mortgagor by will bequeathed the property hypothecated to the appellants as legatees, by particular title and the executors being sued on the mortgage, were protested by the heirs, not to pay the mortgage out of the general estate, notwithstanding a clause in the will by which they, the executors, were directed by the testator, to first pay all his just debts &c. The executors thereupon called in the particular legatees, en garantie. Issue that the particular legatees took the legacy subject to the incumbrance upon it, and that they and not the general legatees, were liable for the hypothec in question. *Held* that under Arts, 741, 875, 889. C. C., (1) the particular legatees were liable. *Harrington & Corse*. 26. L. C. J., 79. Q. B. 1882.

26. But reversed in Suprême Court, a majority of the Court holding that the universal legatees were liable, where the burden was not expressly thrown on the particular legatees by the terms of the will. *Id.* 9. S. C. Rep. 412 Su. Ct., 1883.

27. But in another case. *Held*—Que le légataire particulier, en l'absence de demande de réduction par les créanciers du testateur, n'est ni tenu, ni obligé au paiement des dettes de celui-ci, pas même de celles dues par hypothèques sur les immeubles, à lui légués, et que le légataire universel, est seul tenu et obligé au paiement des dites dettes. *Penisson & Penisson* 9 Q. L. R. 122. Q. B., 1883.

28. Et que le légataire particulier qui paye l'hypothèque grevant l'immeuble qui lui a été légué, est subrogé de plein droit aux droits du créancier qu'il a payé. *Id.*

## VIII. LIABILITY OF TIERS DETENTEUR.

29. The holder of a property against which proceedings were taken, and which was destroyed by fire pending the proceedings, would be held liable for the loss unless he can prove unavoidable accident as in the case of a lessee. *Pilon & Brunette*, 12 R. L. 74, S. C., 1881.

IX. MISREPRESENTATIONS IN, *see* DAMAGES FOR FALSE IMPRISONMENT.

## X. ON PROPERTY TRANSFERRED.

30. In May 1868, one H. R., gave a mortgage on a property which he never possessed as owner, but only as occupant by permission of the Crown, in virtue of a location ticket which he shortly afterwards transferred to the *auteur* of respondent. *Held* that the hypothec was worthless, but even if it was valid, it was prescribed by a counter possession in good faith of upwards of ten years. *Pacaud & Rickaby*, 1 Q. B. R. 311, Q. B., 1881.

## XI. PRIVACY OF.

31. The plaintiff was the universal legatee of her husband who by deed of 7 May, 1872, sold the immoveable in question to one D. from whom it was acquired by the defendant. On the 31st December, 1872, D. hypothecated the property in favor of contestant and the hypothec was registered on the same day. The sale from plaintiff's husband to D. was not registered until 15th September, 1879. Plaintiffs were collocated in preference to contestant, that is to say, the vendors claim under the sale of May, 1872, registered 15th September, 1879, was preferred to the hypothec granted and registered the 31st December, 1872. Contestants claimed that the *bailleur de fonds* claim of the plaintiffs, not having been registered within thirty days, and the hypothec of contestant having been registered first, the latter should be preferred. *Held* following *Pacaud & Constant* (1) that until the registration of the vendor's claim the purchaser was not in a position to grant a hypothec, and consequently the vendor's claim must be preferred, though registered after the thirty days. *Chrétien & Cloutier*, 7 Q. L. R. 81, S. C., 1881.

## XII. PROCEEDINGS UNDER WHERE OWNERSHIP IS UNCERTAIN.

32. The plaintiff having a privileged claim for arrears of assessments on lot 593, St. Ann's Ward, Montreal, commenced proceedings by petition for its sale under article 900 C. C. P. (2) alleging that they had done all diligence to find the owner. Defendant came in as owner and claimed the land, alleging that he had always been the known owner of it and was so named in the *livre de renvoi* of that ward. The Court found this to be so and that the City having made their *requête* in chambers, instead of the Court, the proceedings were null. *City of Montreal & Loignon*, 4 L. N. 386, S. C., 1881.

## XIII. PROOF OF INSOLVENCY OF MORTGAGOR.

33. Contestation of the collocation for the amount of a mortgage granted by defendant April 28, 1880. The bank contested the collocation on the ground that at the date of the mortgage defendant was notoriously insolvent. *Held*, that though defendant's position about that time was doubtful, the proof of notorious insolvency was insufficient. *La Banque Jacques-Cartier & Meunier*, 4 L. N. 213, S. C., 1881.

(1) II Dig. 650-51.

(2) When the owner of an hypothecated immoveable is unknown, or uncertain, the creditor, to whom the capital or two years of the interest; (or two years of arrears of any constituted or other rent) secured by such hypothec is due, may present a petition to the Superior Court praying for the sale of such immoveable. 900 C. C. P.

## XIV. REGISTRATION OF.

34. The defendant by marriage contract undertook to hypothecate the first land he might acquire, to secure to his wife the amount of down stipulated in the marriage contract. He acquired land, and a creditor registered a judgment against the property. Subsequently notice was given to the Registrar by the defendant, that he had bought this land with a view to subject it to a hypothec for the amount of the wife's dower. *Held*, that the notice created no hypothec whatever, and the wife's claim to priority over the judgment creditor's registered claim was rejected. *Parham & Maréchal*, 6 L. N. 54, S. C., 1882.

35. Where the widow of the late seignior of Lachenaie was collocated on the report of distribution of the proceeds of a part of her late husband's estate for moneys coming to her under her marriage contract and to secure which the said property was hypothecated.—*Held* that the registration of such hypothec after the publication of the notice of deposit of said *cadastre* was valid and preserved the hypothec so created. *Chisholm & Pauzé*, 26 L. C. J. 162, S. C., 1882.

## XV. RIGHTS OF CREDITORS.

36. The appellants being hypothecary creditors of the defendant on whom the immovable in question was sold filed an opposition for payment in which they set up—the sale of the property by one D., to defendant; a hypothec from defendant to them; that the sale to defendant was made with warranty against incumbrances and that in good faith he had made improvements on the property to the extent of \$3000, that at the time of the sale to defendant the property was subject to respondents claim for which defendant was not personally liable, and they the appellants had a right to exercise the claim of their debtor for improvements in default of his doing so. They then prayed for a ventilation, and for a collocation on account of the amount due under the obligation, on the sum to be established by the ventilation as the amount of the additional value given to the property by the improvements. *Held*, reversing the judgment of the Court below and maintaining the opposition, that the opposants were entitled to rank for the claim of their debtor, under the circumstances, even though unregistered. *Compagnie de prêt et crédit Foncier & St. Germain*, 26 L. C. J. 39 and 1 Q. B. R. 192, Q. B., 1881.

37. Where the holder of an hypothecated immovable is personally responsible for the debt, it is no bar to a direct action against the debtor that the creditor has previously obtained a judgment en déclaration d'hypothèque, under which the debtor has abandoned the immovable; even though the property has not been discussed, and the creditor can recover by direct action the costs

occurred in the hypothecary action, as well as his debt. *Newton & Cruise*, 6 L. N. 107, S. C. 1883.

38. A hypothecary creditor may invoke the prescription required by his debtor as to municipal taxes, notwithstanding the renunciation of the debtor. *Les Commissaires d'Ecole de St-Henri & Desmarteau*, 6 L. N. 82, S. C. R. 1882.

39. A hypothecary creditor is entitled to ask for a ventilation, where it appears that by taxing a number of lots en bloc, the taxes due on a much larger extent of property were imposed on a portion, the proceeds of which are being distributed. *Id.*

40. Action to recover the amount of a hypothec for \$882, with interest. The creditor had however insured the property for \$800, had paid the premiums, and the property having been destroyed by fire had received the insurance money. *Held* that he was bound to credit the defendants with the amount of the insurance money, less the amount paid in premiums. *Archambault & Lamère*, 5 L. N. 294 & 2 Q. B. R. 97, & 26 L. C. J. 236, Q. B., 1882.

41. Creditors who ask for the separation of an undivided property preserve their privilege only by registration of their rights within six months of the death of the debtor according to Art. 2066 C. C. *Pangman & Pauzé*, 12 R. L. 440, S. C., 1883.

42. One G., having obtained from R. a deed of sale of the latter's property, borrowed money from plaintiff and in security gave him a hypothec on this property. The deed of sale was subsequently set aside as being radically null by judgment in a suit brought by R. against G., but to which O. was not a party, and R. again came into possession of his property. No proof was adduced in this case to establish as against Plaintiff that the sale from R. to G. was null, and the defendant merely filed a copy of the deed and a copy of the judgment in the case of *R. v. G.*, pronouncing the validity of that deed. *Jugé*, que le débiteur ne représente pas le créancier hypothécaire dans les instances relatives aux biens hypothéqués, et que la rescision prononcée contre le premier n'est pas chose jugée contre le second. *Ouellet & Rochette*, 9 Q. L. R. 289., S. C. R. 1883.

## XVI. RIGHTS OF TIERS-DETENTEUR.

43. In an action against a tiers-détenteur by a hypothecary creditor.—*Held* following *Matte & Laroche*, that the terms of Article 2072 (1) of the Civil Code as to the rights of

(1) The holder against whom the hypothecary action is brought may also demand that the surrender which he may be ordered to make, be subject to his privilege of being paid, what has been expended upon the immovable, either by himself, or by such of the persons from whom he derives his claim as are

the tiers-détenteur for expenses and improvements were restricted, and referred only to necessary expenses and improvements of value. *Bricault & Bricault*, 11 R. L., 63, S. C. 1881.

44. The tiers détenteur who has made improvements on the immoveable hypothecated cannot remove them after the judgment *en déclaration d'hypothèque* if by his title he is charged with the hypothec and obliged to pay the debt. *Société de construction de Montréal & Desautels*. 1. Q. B. R. 183. Q. B. 1881.

45. But an owner whose property is sold at the suit of his personal creditors has a right to take out of the proceeds of the sale as against the hypothecary creditors the improvements and expenses he has made during his possession, and with regard to them must be considered as a tiers détenteur. *Compagnie de prêt et Crédit Foncier & St. Germain*, 1. Q. B. R., 192, and 26 L. C. J. 39. Q. B. 1881.

not personally bound to the payment of the hypothecary debt, the whole in conformity with the rules contained in the title of *ownership*, and with interest from the day when such expenditures were liquidated. 2072 C. C.

46. The defendant, in making an abandonment, reserved buildings constructed by him on the property after the plaintiff got his mortgage. *Held*, that the reservation had no effect, and that the removal by defendant of the buildings while the property was under seizure, was a deterioration within C. C. P., 646. (1) *Gailloux & Bureau*, 7 L. N. 90, Q. B., 1884.

#### XVII. WHAT IS.

47. Where two parties exchanged two lots of land in the following terms: "*Lesquels morceaux de terre sus-échangés resteront garants l'un de l'autre de la somme de quinze cents piastres tel qu'il est d'usage en fait d'échange.*" *Held* on contestation of a report of distribution to be a good hypothèque for that amount on the lot given in exchange. *Caya & Trust & Loan Company of Canada*, 1 Q. B. R. 10, Q. B., 1880.

(1) The judgment debtor cannot nor can any other person cut timber on the property seized, or in any manner deteriorate the same, on pain of being imprisoned for a term not exceeding six months, under a rule of Court or the order of a judge in vacation. C. C. P. 646.

# I

## SUMMARY OF TITLES

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ILLEGAL ARREST.

I. DAMAGES FOR, *see* DAMAGES.

ILLEGAL ASSOCIATIONS.

I. PROCEEDINGS AGAINST, *see* COMPANIES.

ILLEGAL SEIZURE.

I. DAMAGES FOR, *see* DAMAGES.

ILLEGITIMATE CHILDREN.

I. CUSTODY OF.

1. To an action by a mother as tutrix for aliments against the defendant, father of the child, the defendant pleaded that the plaintiff was married and with the authorization of her husband in consideration of the sum of \$361.74 had discharged him from all responsibility for its future support, and also that as father of the child he was entitled to the possession and custody of it. *Held*, that in our law the authority of a father and mother of a natural child is absolutely equal, and when necessary the courts have discretionary authority in such matters, and may give the custody to the one or the other of them, as their conduct and circumstances may seem to justify. *Côté & Denault*, 10 Q. L. R. 115, S. C. R., 1884.

IMBECILES.

I. LIABILITY FOR SUPPORT OF.

2. La demanderesse, ayant, en vertu des dispositions sus mentionnées et de celles sus-transcrites, payé au Gouvernement \$65.18 pour la pension, à l'asile des aliénés de Beaufort, pendant l'année 1882, d'O. B., fils de la défenderesse, lui en réclame le remboursement par l'action en cette cause. La défenderesse a nié le droit d'action de la demanderesse, et a plaidé qu'elle était incapable de payer une pension à son fils et qu'elle a, avant l'action, offert à la demanderesse de lui rembourser annuellement \$32.59. *Jugé*, que le recours, que l'acte de Québec, 43-44, Vic., cap. 14, donne aux municipalités contre les parents, obligés à la pension et à l'entretien des aliénés, pour la moitié qu'il les oblige de payer au Gouvernement de la pension, dans les asiles des aliénés qui, avant leur internat, avaient eu, pendant six mois, leur résidence dans les limites, ne leur confère pas un droit nouveau, et ne fait que subroger

les municipalités aux droits des aliénés contre ceux qui leur doivent des aliments. *Corp. de l'Ancienne Lorette v. Voyer*, 9 Q. L. R. 282, C. C. 1883.

3. Que dans le cas où le tribunal n'obligerait le débiteur des aliments, qu'à recevoir dans sa demeure, à nourrir et à entretenir l'aliéné, la municipalité ne peut pas recouvrer plus que la valeur de cette prestation en nature. *Id.*

4. Que le débiteur des aliments ne peut pas opposer à la municipalité, qui a payé au Gouvernement, la pension d'un aliéné, que celui-ci n'avait pas résidé dans ses limites pendant les six mois précédant immédiatement son internat dans un asile. *Id.*

IMMEUBLES.

I. POSSESSION OF, *see* IMMOVEABLES.

IMMORAL CONTRACTS—*See* CONTRACTS.

IMMOVEABLES.

I. ATTACHMENT OF BEFORE JUDGMENT.  
II. RIGHTS OF POSSESSOR IN BAD FAITH.  
III. TITLE TO.

I. ATTACHMENT OF BEFORE JUDGMENT.

5. Immoveables cannot be attached before judgment, under C. C. P. 834, (1) *Corbeil & Charbonneau*, 4 L. N. 277 & 12 R. L. 316, S. C. R., 1881.

6. Remarks of Johnson, J., in the judgment in *Corbeil & Charbonneau*, maintaining a seizure of real estate before judgment as above. 4 L. N. 60, S. C., 1881.

II. RIGHTS OF POSSESSOR IN BAD FAITH.

7. Petitory action to recover two pieces of land. Question as to the improvements

(1) A creditor has a right before obtaining judgment to attach the goods and effects of his debtor. In the case of the *dernier équipier*. (2) In all cases when as plaintiff, he produces an affidavit establishing: that the defendant is personally indebted to him in a sum exceeding five dollars, that the defendant absconds or is immediately about to leave the Province, or is secreting or is about to secrete his property, with the intent to defraud his creditors, and the plaintiff in particular; or that the defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors, or to make an assignment to them, or for their benefit, and that he still carries on his business, and in either case, that the deponent verily believes, that without the benefit of the attachment the plaintiff will lose his debt or sustain damage. 834 C. C. P.

claimed by the defendant in possession. *Held* that the possessor in bad faith is entitled to set off the cost of necessary improvements against the claim for rents, issues and profits received by him during his possession. As to improvements not necessary, the proprietor has the option of keeping them upon paying the value or of permitting the possessor to remove them, which, however he may do only where they can be removed without injury to the land. *Wright & Wright*, 6 L. N. 116, S. C. R., 1883.

### III. TITLE TO.

8. To a petitory action to recover possession of a lot which had been in defendant's possession for upwards of twenty years under a title granted him by mistake in description, and which he held in good faith during that time, believing it to be his proper lot, and made considerable improvements on it up to the time the action was brought by the plaintiff, his neighbor, claiming it as his. *Held* reversing the judgments, final and interlocutory of the Court below, that considering the good faith of the defendant, the time he had had the lot in his possession and the improvements he had made on it, that the action should have been dismissed. *Lareau & Dunn*, 7 L. N. 218, Q. B., 1884.

### IMPENSES—See HYPOTHEC, IMPROVEMENTS, LEASE, IMMOVABLES, ETC.

### IMPERIAL ARMY ACT.

I. APPLICATION OF, IN CANADA, *see* MILITIA LAW.

### IMPORTS.

I. CUSTOM DUES ON, *see* CUSTOMS.

### IMPRISONMENT.

I. ACT TO AUTHORIZE THE TRANSFER OF PRISONERS FROM ONE GAOL TO ANOTHER ON CERTAIN CONDITIONS. C. 47 VICT., CAP. 37.

II. ACT TO PROVIDE FOR THE EMPLOYMENT WITHOUT THE WALLS OF THE COMMON GAOL OF PRISONERS SENTENCED TO BE IMPRISONED THEREIN C. 48-49, VICT., CAP. 81.

III. ALIMENTARY ALLOWANCE.

IV. CONTRAINTE PAR CORPS.

V. FOR CONTEMPT.

VI. OF PERSONS SEVENTY YEARS OF AGE.

VII. TERM OF.

VIII. UNDER CAPIAS, *see* CAPIAS, FILING STATEMENT.

IX. WITH HARD LABOR.

### III. ALIMENTARY ALLOWANCE.

9. The petitioner, a bailiff, was in gaol for contempt of account in selling goods under seizure in spite of opposition filed to the seizure and an order from the prothonotary to suspend proceedings. He asked for an alimentary allowance under C. C. P. 790 (1) and supported the application by an affidavit that he was not worth \$50. *Held* following *Cramp & Coquereau* (2) and *Vermette & Fontaine* (3) that such a case did not come under the article of the Code. *Leroux & Deslauriers*, 12 R. L. 298 & 4 L. N. 256. S. C. 1881, and *Mathieu & Tremblay*, 4 L. N. 299, S. C. 1881.

### IV. CONTRAINTE PAR CORPS.

10. On a rule for *contrainte par corps* against a *fol adjudicataire* to compel payment of the loss occasioned by a resale of the property. *Held* that neither personal service of the rule where the motion had been personally served nor a description of the property were necessary. *Delisle & Souche & Souche*, 26 L. C. J. 162, S. C. R. 1881.

11. Demand for *contrainte par corps* against judicial sureties contested on the ground that there had been no *commandement de payer* and that the four months delay had not expired. *Held* that there had been commandment to pay by the seizure and sale of moveables under execution, while the four months delay only applied to tutors and curators in default. *Dupras & Sauvé*, 4 L. N. 299, S. C. 1881.

12. Imprisonment of a defendant condemned to *contrainte par corps* for default of paying the amount of a judgment should take place in the district where the defendant resides, and not in the district where the judgment was rendered. *Lacoste & Castagne*, 11 R. L. 337, S. C. 1882.

13. *Contrainte par corps* does not lie against a *tiers saisi* who having declared to owe nothing to defendant has been condemned on contestation to return a piano which he purchased from defendant in fraud of the creditors or pay the value, and neglects to do so. *Racine & Kay*, 2 Q. B. R. 346, Q. B. 1882.

14. There is no right of imprisonment against the holder of an immoveable who has been condemned to give up possession of it

(1) Any person thus imprisoned, may upon petition to the Court or to a judge, previously served upon the creditor, and accompanied with an affidavit that he is not worth fifty dollars obtain an order, commanding the creditor to pay him, as an alimentary allowance, during the period of his imprisonment not less than seventy cents, and not exceeding one dollar per week. 79 C. C. P.

(2) II. Dig. 364-11.

(3) II. Dig. 364-10.

and render an account because he has not produced his account within the delay fixed by the Court. *Crowley & Chrétien*, 11 R. L. 375, S. C. 1882.

15. Where damages had been rendered for *injures personnelles*.—*Held* following *Barthe & Daggy*, (II Dig. 366-21,) that *contrainte par corps* might be obtained on application subsequent to judgment, though not asked for by the declaration and that for a sum less than 200 *livres*. *Ouellette & Vallières*, 26 L. C. J. 391, C. C. 1882.

16. Where a defendant and a guardian were ordered by a judgment in revendication to deliver to the plaintiff the goods seized in the cause and refused to do so, and a rule issued against them, to which the defendant pleaded that the rule had not been preceded by a motion nor had he had been called upon to show cause why the rule should not issue, nor was he in any case liable to *contrainte par corps* in the premises, and the *gardien* answered to the same effect. *Held*, discharging the rule as to the defendant without costs and confirming it against the guardian. *Watso & Labelle*. 26 L. C. J. 121. C. C., 1882.

17. Le demandeur ayant obtenu jugement contre la défenderesse et pris exécution, elle s'est opposée à la saisie en fermant les portes de sa maison et refusant de les ouvrir. Le demandeur a alors obtenu contre elle une contrainte par corps, qu'il a fait exécuter, le 12 septembre dernier par l'appréhension de la défenderesse et sa livraison au gardien de la prison de ce district où elle est détenue depuis. Elle a présenté deux requêtes, une pour les aliments auxquels l'article 790 du Code de Procédure donne droit au débiteur incarcéré qui ne possède pas de biens au montant de \$50 et l'autre pour son élargissement fondée sur ce qu'elle avait fait cession et abandon de ses biens. *Jugé*.—Que la contrainte par corps n'est qu'un mode d'exécution des jugements : Que le rebel à la justice, qui n'est que contrainte par corps jusqu'au paiement, a droit à des aliments ; Que la cession de biens faite par le contraint par corps ne lui permet pas d'être libéré, avant l'expiration de quatre mois accordés au créancier pour la contester. *Côté & Vermette*. 9 Q. L. R. 340. S. C., 1883.

18. *Jugé*.—Que la condamnation par corps, pour torts personnelles, est laissée à l'arbitrage du tribunal, qu'elle ne peut être prononcée que lorsque les dommages accordés se montent à \$16.63½ ou plus, et 4 mois après la signification au défendeur du jugement qui les accorde, et que son exécution ne peut être ordonnée que 15 jours après le jugement qui la prononce. *Nysted & Darbyson*. 9 Q. L. R. 322. S. C., 1883.

#### V. FOR CONTEMPT.

19. A defendant who under pretence of desiring to make a settlement, induces a bailiff charged with a writ of execution

against him to refrain from making a seizure, and accompany him to the plaintiff for that purpose, and in the interval removes a portion of his goods, is in contempt of Court, and will be ordered to be imprisoned until the whole amount is paid. *Ross & O'Leary*, 6 L. N. 173. S. C., 1883.

#### VI. OF PERSONS SEVENTY YEARS OF AGE.

20. Where a person had been committed for making away with his goods to evade execution against them.—*Held* that he was liable to imprisonment though over seventy years of age. *Ross & O'Leary*. 6 L. N. 241, and 27 L. C. J. 220 S. C., 1883.

#### VII. TERM OF.

21. On an application for a writ of *habeas corpus*.—*Held*, that the general rule, that the period of imprisonment in pursuance of any sentence commences on and from the day of passing such sentence does not suffer exception where the defendant is allowed to go at large after sentence without bail and therefore where a defendant was allowed to go at large until the term of the sentence had expired her commitment subsequently was held to be illegal. *Gervais exp* 6 L. N. 116, Q. B. 1883.

22. In a similar case the commitment was held good as the term had not expired when it was made. *Henault Exp*. 6 L. N. 121. Q. B. 1883.

IX. WITH HARD LABOUR *see* C. 44. VIC. CAP. 31.

23. The license. Act of Quebec in so far as it imposes a penalty of imprisonment with hard labor is unconstitutional. *Collopy & The Corporation of Quebec*. 7. Q. L. R. 19. S. C., 1880.

#### IMPROBATION.

- I. GROUNDS OF.
- II. MUST BE BY INSCRIPTION EN FAUX.
- III. RIGHT TO.
- IV. WHEN NECESSARY.

#### I. GROUNDS OF.

24. The plaintiff in support of his action filed a copy of a notarial deed of lease. The defendant discovered that there were errors in the copy and asked permission to inscribe *en faux*. The original minute was then produced and it appeared that the errors in the copy were not of a serious character. Thereupon the plaintiff moved for leave to withdraw the first copy and to file a correct copy. The defendant objected. The Court below allowed the production of an authentic copy, but the copy first produced remained in the record. The parties proceeded upon the inscription *en faux*, and it was proved

that the copy first produced was so far correct that there was nothing to prevent judgment being rendered in favor of the plaintiff. In review, judgment dismissing the inscription was confirmed. *Manard & Gravel*, S. C. R., 1883.

## II. MUST BE BY INSCRIPTION EN FAUX.

25. Where to an action on a promissory note the defendant filed a deed of composition and discharge subsequent to the maturity of the note and the plaintiff attempted to prove by witnesses that the deed was not made at the date it bore.—*Held* that in no case could the truth of an authentic deed be called in question otherwise than by an inscription *en faux*, save in the case of a bailiff's return. *Lewis & Primeau*, 7 L. N. 39, S. C. 1883.

## III. RIGHT TO.

26. An application to inscribe *en faux* against the certificate of the Prothonotary regarding the posting of a report of distribution, will not be granted after the report has been homologated in favor of an opposant, who knew of the *faux* complained of prior to the judgment homologating the report. *Pangman & Fauxé*, 27 L. C. J. 140, S. C. 1883.

## IV. WHEN NECESSARY.

27. The resolutions of a Joint Stock Company duly certified as such and filed in the case, can only be attacked by improbation. *Desmarais & Mutual Benefit Society of Joliette*, 12 R. L. 198, S. C. 1882.

## IMPROVEMENTS.

I. HYPOTHECARY CREDITOR MAY RANK FOR, WHEN DEFENDANT FAILS TO DO SO, *see* HYPOTHEC, RIGHTS OF CREDITORS.

II. RIGHTS OF POSSESSOR TO, *see* IMMOVABLES.

## IMPUTATION.

I. OF PAYMENTS, *see* PAYMENTS.

## INCIDENTAL DEMAND—*See* PROCEDURE.

## INDECENT EXPOSURE.

I. ARREST FOR.

28. Arrest under the Vagrant Act (32-33

Vict. Cap. 28) for indecent exposure cannot be made without warrant after an interval of time following the offense, and where such unauthorized arrest was made, the city was held liable in damages. *Walker & City of Montreal*, 4 L. N. 215, S. C. 1881.

## INDIANS.

I. ACT RESPECTING AMENDED, *see* C. 44 VICT., CAP. 17 ; C. 45 VICT., CAP. 30 ; C. 47 VICT., CAP. 26.

## INDIAN RESERVES.

I. LIABILITY OF PERSONS TRESPASSING UPON.

29. Qu'une personne autre qu'un sauvage, qui travaille même temporairement, sur la réserve de Caughnawaga, après avoir reçu un avis du Département des Sauvages, à Ottawa, qui lui défend de résider sur, et d'avoir à quitter la dite réserve, peut être légalement arrêté et traduit devant un magistrat, sur le mandat de l'agent du Surintendant Général des Affaires des Sauvages, conformément à la 43me Vict., (Canada 1880) ch. 28, sect. 22-23-24. *Lafleur & Cherrier*, 5 L. N. 411, S. C. 1882.

## INDICATION OF PAYMENT—*See* HYPOTHEC, PAYMENT.

## INDICTMENT—*See* CRIMINAL LAW.

## INFANTS.

I. CUSTODY OF, *see* CHILDREN, &c.

## IN FORMA PAUPERIS.

I. COSTS IN ACTION, *see* COSTS.

## INFRINGEMENT.

I. OF PATENT, *see* PATENT.

II. OF TRADE MARK, *see* TRADE MARK.

## INHERITANCE.

I. RULES OF, *see* HEIRS, SUCCESSION, &c.

## INJUNCTION—See PROHIBITION.

## I. GROUNDS OF.

## II. INTERIM ORDER.

## III. PROCEEDINGS IN WHEN NOT UNDER THE STATUTE.

## IV. RIGHT TO.

## I. GROUNDS OF.

30. Application for a writ of injunction to order the removal of certain turnpike gates, and to restrain and forbid the taking of tolls at them; application refused on the grounds. 1st, that the statute of 1878, c. 14, authorizes injunctions only to *suspend* certain acts, proceedings and operations (sect. 1st), and 2ndly, as regards the tolls, on the ground that they were taken from the public, and not from the party plaintiff, who had no right to complain on their own behalf. *Municipalité de la Pointe Claire & Cie de Chemin de Pège de la Pointe Claire*, 5 L.N. 259, S.C.R., 1882.

## II. INTERIM ORDER.

31. In a suit attacking the validity of an alleged transfer of the telegraph lines, and franchises and privileges of a telegraph company, the Court will not grant, before return of the action, an interlocutory order restraining the company from raising the rates of transmission in pursuance of the agreement, and where such petition was presented it was ordered to be joined to the principal demand and to stand until final judgment. *Low & Montreal Telegraph Co.*, 4 L.N. 293, S.C., 1881.

## III. PROCEEDINGS IN WHEN NOT UNDER THE STATUTE.

32. Injunction to restrain one H. of the City of Montreal, from publishing in Canada certain books containing articles prepared for the Encyclopedia Britannica, the latter work having been registered by the appellants, under the copyright Act of 1878. The respondents came in by intervention, and filed a preliminary plea on the ground that only four day's delay had been allowed in the service. *Held*, affirming the decision of the Court below, that as the case did not fall within any of the cases provided for by the Injunction Act of 1878, the delay should be the same as in ordinary suits. *Black & Stoddart*, 4 L.N. 282 & 1 Q.B.R. 287, Q.B., 1881.

## IV. RIGHT TO.

33. Where the railway commissioners were proceeding with an expropriation of the property of petitioners.—*Held* that an order of the Court would issue to prevent an illegal act without having recourse to a mandamus,

and that in such case the service may be made at the elected domicile of the defendants. *Bourgoin & Malhiot*, 7 L.N. 286, S.C., 1878.

34. Where several plaintiffs are each claiming a right against one defendant, or where several defendants each have a right to make a separate defence against the claim of one plaintiff, and there is only one general question to be settled which pervades the whole, the Court may, by injunction, direct proceedings to be stayed in the separate contestations until the question is determined in a direct action brought for the purpose of testing it. *North British & Mercantile Fire & Life Insurance Co. v. Lambe*, 27 L.C.J. 222 & 5 L.N. 323, S.C., 1882.

35. In an action for the infringement of a trade mark the plaintiff obtained an interim order to restrain the defendants from using it. Defendants filed an exception to the form on the ground that an injunction could not be had. *Per curiam*.—This case is not covered by 42 Vic., cap. 22, of Quebec. Plaintiffs have cited 35 Vic., cap. 32, S.S. 21, 22, as in favor of his proceeding. Sec. 21 says the Court may, upon giving judgement for the plaintiff, award a writ of injunction to the defendant commanding him to forbear from committing, etc. This gives authority to the Court on final judgment. It appears to the Court that as it has authority on the final judgment to dispose of the case in question, the plaintiffs are entitled to an interim order to prevent its disappearance. *Seigert & Cordingly*, 5 L.N. 131, S.C., 1882.

36. The Superior Court has authority to issue a provisional order, on a writ of quo warranto, to prevent an illegal proceeding by a member of an inferior tribunal, such as the Board of Revisors acting under 37 Vict. (Que.) ch. 51, for the revision of the voter's lists. *Lamontagne & Stevenson*, 6 L.N. 53, S.C., 1883.

37. On an application by a ratepayer for a provisional injunction to prevent the Corporation of Montreal, and its officers from completing a contract with a gas company, which had been authorized by a resolution of the City Council. *Held*, (1) that the order asked for would be useless, as the signatures of the Mayor and City Clerk to the writing evidencing the contract would not affect the rights of the parties, the illegality alleged, if it existed, being as effectual against the contract when signed as before. *Stephens & City of Montreal*, 7 L.N. 114, S.C., 1884.

38. If the defendant disputes the plaintiff's legal title to the object in question, or denies its violation, the Court will seldom, upon an interlocutory order, grant an injunction before the plaintiff has established his title. The burden lies upon the plaintiff of showing that his inconvenience exceeds that of the defendant. *White & Whitehead*, 7 L.N. 292, S.C., 1884.

INJURES VERBALES—*See* LIBEL  
AND SLANDER.

## INLAND REVENUE.

I. ACTS CONCERNING, *see* C. 45 VIC., CAP. 8 ;  
C. 46 VIC., CAP. 15.

II. CONSOLIDATED ACT OF 1883 AMENDED.  
C. 48-49 VIC., CAP. 62.

## INSANE PERSONS.

DISCHARGE OF *See* LUNATIC ASYLUMS.

## INSANITY

I. DOES NOT AFFECT STATUS PRIOR TO INTER-  
DICTION *See* CIVIL STATUS.

II. OF HUSBAND NOT A GROUND FOR SEPARA-  
TION OF PROPERTY.

III. OF TESTATOR.

II. OF HUSBAND NOT A GROUND FOR SEPARA-  
TION OF PROPERTY.

39. Action *en séparation de biens* brought by the plaintiff against the defendant as curator to the interdiction for insanity of her husband. The declaration after setting out the marriage, interdiction of the husband and appointment of the defendant as curator, went on to allege that the plaintiff had no confidence in the defendant, that he was a person perfectly illiterate, that he was administering badly the property of the community, that he refused to allow her a sufficient sum out of it for the maintenance of herself and her children that without the benefit of a separation of property her interests would be imperilled. *Held* (dubitante) that the action on such grounds would not lie. *Paradis & Laflamme*. 8. Q. L. R. 302. S. C., 1878.

III. OF TESTATOR.

40. Action to set aside a will. Evidence as to sanity or otherwise considered, and will maintained. *Russel & Lafrancois*, 5 L. N., 81. Q. B. 1882.

## INSCRIPTION.

I. FOR ENQUÊTE *See* PROCEDURE.

INSCRIPTION EN FAUX *See* — IM-  
PROBATION.

## INSOLVENT.

I. LIABILITY OF *See* INSOLVENCY.

## INSOLVENCY

I. ACTION AGAINST ASSIGNEES.

II. APPOINTMENT OF ASSIGNEES.

III. ASSIGNMENT UNDER THE CODE OF PROCEDURE.

IV. CLAIMS IN.

V. COMPOSITION NOTES.

VI. COMPOSITION AND DISCHARGE.

VII. CONTESTATION OF SECURED CLAIMS.

VIII. DISCHARGE.

IX. EFFECT OF ON RENT TO BECOME DUE.

X. FRAUDULENT PREFERENCE.

XI. IMPRISONMENT UNDER ACT.

XII. INTEREST ON CLAIMS.

XIII. INTERVENTION IN ACTION AGAINST INSOLVENT.

XIV. KNOWLEDGE OF.

XV. LEASE NOT TERMINATED BY.

XVI. LIABILITY OF CREDITORS.

XVII. LIABILITY OF SURETY OF ASSIGNEE.

XVIII. OF DEBTOR DOES NOT EFFECT THE RIGHT OF THE PLAINTIFF WHO HAS JUDGMENT ON THE DECLARATION OF A GARNISHEE.

XIX. POWER OF JUDGE IN.

XX. PROCEEDINGS AGAINST INSOLVENT ESTATE

XXI. PROCEEDINGS FOR RENT UNDER.

XXII. PROOF OF COLLUSION IN.

XXIII. PROOF OF SUFFICIENT TO SET ASIDE A HYPOTHEC.

XXIV. REMUNERATION OF ASSIGNEE.

XXV. REMUNERATION OF TRUSTEES.

XXVI. RIGHTS OF CREDITORS.

XXVII. RIGHT OF INSOLVENT TO RETURN GOODS.

XXVIII. RIGHTS OF PRIVATE AND FIRM CREDITOR.

XXIX. SALE OF BOOK DEBTS.

XXX. SALE OF INSOLVENCY ESTATE.

XXXI. SURETIES NOT AFFECTED BY DISCHARGE IN.

XXXII. STATUS OF ASSIGNEES.

XXXIII. TRANSFER FOR BENEFIT OF CREDITORS IN THE ABSENCE OF INSOLVENT ACT.

XXXIV. WHAT CONSTITUTES.

XXXV. WINDING UP OF BANKS, CORPORATIONS, COMPANIES, ETC.

I. ACTION AGAINST ASSIGNEE.

41. Petitory action against an assignee in insolvency under the Insolvent Act dismissed in appeal on the ground that it should have been brought under the Insolvent Act, Sec. 125 by summary petition. *Fair & Désilets*, 4. L. N. 84, Q. B. 1881.

II. APPOINTMENT OF ASSIGNEE.

42. Where it is clearly established that the appointment of an assignee has been had by fraud the judgment in virtue of section 37 of

the Insolvent Act declare the assignee duly elected who has obtained a majority of the electors having a right to vote at the meeting. *Lemieux & Quebec Bank*, 1 Q. B. R. 91, Q. B. 1880.

### III. ASSIGNMENT UNDER THE CODE OF PROCEDURE.

Article 763 of the Code of Civil Procedure is repealed and replaced by the following :

"763. Any debtor arrested under a writ of *capias ad respondendum*, and every trader who has ceased his payments, may make a judicial abandonment of his property for the benefit of his creditors.

In the absence of *capias*, no abandonment can be made, if the debtor has not been so required as hereinafter provided.

763a. Every trader who has ceased his payments may be required to make such abandonment by a creditor whose claim is unsecured for a sum of two hundred dollars and upwards." Q. 48 Vict., Cap. 22, Sec. 1.

Article 764 of the said Code is amended by striking out the words "in the prothonotary's office" and by adding at the end of the article, the following paragraph :

"The abandonment is made in the office of the prothonotary of the Superior Court of the district where is issued the *capias* and in the absence of *capias*, of the district of the place where the debtor has his principal place of business, and in default of such place, of the place of his domicile." Sec. 2.

Art. 765 of the said Code is repealed and replaced by the following :

"765. The debtor must give notice of the abandonment by inserting an advertisement to that effect in the Quebec Official Gazette and by a registered notice sent by mail to the address of each of his creditors. The notice addressed to the creditors must contain a list of the creditors of the debtor, mentioning the amount due to each. In default of such notices being given by the debtor, any creditor may give them himself." Sec. 3.

Articles 768 and 769 of the said Code are repealed and replaced by the following :

"768. Immediately after the filing of the statement, the prothonotary appoints a provisional guardian, whom he, as far as possible, selects from amongst the most interested creditors, who either personally, or by a person whom he delegates for that purpose, takes immediate possession of all the property liable to seizure and the books of account of the debtor.

The guardian may immediately dispose of any perishable goods, and may take conservatory means under the direction of the judge, or in the absence of the latter, of the prothonotary.

The abandonment being made, the court, or the judge, upon the demand of a party interested and after taking the advice of the creditors of the debtor convened for that purpose, appoints a curator to the property of the debtor. Inspectors or advisors may also be appointed at this or any subsequent meeting.

The meeting shall be convened within a short delay and in the manner which the court or judge deems suitable. The record of the proceedings upon the abandonment is then transmitted to the prothonotary of the Superior Court of the district in which the debtor has his place of business."

769. After the abandonment any proceeding by way of attachment, attachment for rent, or attachment in execution against the moveables of the debtor is suspended, and the guardian or the curator has a right to take possession of the goods seized, upon serving by a bailiff a notice of his appointment, upon the seizing creditor or upon his attorney or the bailiff entrusted with the writ :

The costs upon such attachment made after the notice, or in the absence of such notice, incurred by a creditor after he had knowledge of the abandonment, either personally or by his attorney or by the bailiff and in all cases the costs of attachment made eight days after the notice given by the debtor or the curator, cannot be collocated upon the property of the debtor, when the proceeds are distributed in consequence of the abandonment.

Article 770 of the said Code is repealed and replaced by the following :

770. The curator is bound to make his appointment known by an advertisement in the Quebec Official Gazette and by a registered notice transmitted by mail to the address of each creditor. In such notice, the curator shall call upon the creditors to file their claims with him within a delay of thirty days.

770. a. The curator appointed may be required to give security, the amount whereof is fixed by the Court or judge and he is subject to the summary jurisdiction of the court or judge. Such security may be given in favor of the creditors generally without mentioning their names." Sec. 5.

Article 772 of the said Code is amended by striking out the second paragraph and substituting the following therefor :

"The curator may, with the permission of the Court or judge, upon the advice of the creditors or inspectors, exercise all the rights of action of the debtor and all the actions possessed by the mass of the creditors.

The curator may sell the debts and moveables and immoveables of the debtor in the manner indicated by the Court or judge, upon the advice of the parties interested or the inspectors. Upon the demand of the curator, authorized by the creditors or by the inspectors, or upon the demand of an hypothecary creditor of which demand sufficient notice must be given to the debtor, the Court or judge may authorize the curator or command him to issue his warrant addressed to the sheriff of the district, where the immoveables are situated, requiring him to seize and sell such immoveables. The Sheriff is bound to execute such warrant, without it being necessary to make and service upon the debtor, but by otherwise observing the same formalities as in the case of a writ *de terre* ; and all proceedings subsequent to the issue of the warrant are had in the Superior Court." Sec. 6.

The following article is added to the said article 772 as amended :

"772. a. The monies realized by the curator from the property of the debtor shall be distributed among the creditors by means of dividend sheets prepared after the expiration of the delays to file the creditor's claims, and are payable fifteen days after notice is given of the preparation of such dividend sheets.

Such notice is given by the insertion of an advertisement in the Quebec Official Gazette, and by a registered notice sent by mail to the address of each creditors of the debtor who have filed their claims, or who appear upon the list of the creditors furnished by him.

The claims or dividends may be contested by any person interested.

The contestation for such purpose must be filed with the curator who is bound to file it immediately with the prothonotary of the Superior Court of the district, in which the proceedings upon the abandonment are then deposited, or to such other district as the parties interested in the contestation may agree upon, and such contestation is proceeded upon and decided in a summary manner." Sec. 7.

Article 773 of the said Code is repealed and replaced by the following :

"773. Any creditor may contest the statement by reason.

1. Of the omission to mention property of the value of eighty dollars ;

2. Of any secreting by the debtor within the year immediately proceeding the institution of the writ, or since, of any portion of his property, with intent to defraud his creditors ;

3. Of fraudulent misrepresentations in the statement, with respect to the number of his creditors or the nature or amount of their claims.

In cases where the debtor has given notice of the abandonment of his property to his creditors, as above prescribed, the delay to contest the statement is restricted, as to the creditors to whom the notice is sent, to four months from the date of sending such notice." Sec. 8.

Article 776 of the said Code is amended by adding thereto the following paragraph :

"If the debtor discharged upon bail, does not produce his statement and declaration within the thirty days mentioned in Article 766, such debtor and his sureties are subject to the same penalties and recourse as hereinabove." Sec. 9.

Article 778 of the said Code is amended by striking out the words "under execution." Sec. 10. Article 780 of the said Code is repealed and replaced by the following :

"780. In cases where a *capias* could not be executed by reason of the absence of the defendant, or because he can not be found, and in all cases in which the defendant has left the province or no longer resides therein and has ceased his payments, there may after notice to the defendant or debtor, in the manner prescribed by the Court or judge, be appointed a guardian or curator whose powers and obligations shall be the same as if appointed after an abandonment of property. Sec. 11.

Art. 799 of the said Code is repealed and replaced by the following :

"799. The writ may also be obtained if the affidavit establish, besides the debt, that the defendant is a trader, that he has ceased his payments and has refused to make an assignment of his property for the benefit of his creditors." Sec. 12.

Article 834 of the said Code is amended by striking out the words "is notoriously insolvent, that he has refused to arrange with his creditors or to make an assignment to their or for their benefit and that he still carries on his business"; and by substitute therefor the words "has ceased his payments and has refused to make an assignment of his property for the benefit of his creditors." Sec. 13.

#### IV. CLAIMS IN.

43. In May, 1879, the appellant proved a claim against the insolvent estate of A. S., with a declaration that the bank held security which could not then be valued. In September following, the bank filed an amended claim which was withdrawn on the 4th of December, when the bank filed another amended claim. In the meantime the bank had received from parties primarily liable, on negotiable instruments endorsed by the insolvent, various sums on account amounting in all to \$1423. *Held*, confirming the judgment of the Superior Court, that the appellant was bound to deduct that sum from the amount of its claim, and also a further sum of \$500 for rebate of interest on notes which were current when the writ of attachment issued against the insolvent. *Bank of Toronto & Fair*, 1 Q. B. R. 230, Q. B., 1881.

44. In another case the appellant assignee to the insolvent estate of the Morris Run Coal Co., filed a claim on the insolvent estate of the

Moisic Iron Co., for a balance of \$330,214.79. The respondents contested the claim alleging that \$36,129.18 was not due by the Moisic Iron Co., but by a former company to whom the balance had been advanced, it should be imputed in payment of \$250,000 of stock transferred as paid up stock, by Mr. W. M. to other parties, but in reality for the Morris Run Coal Co., and which was never paid. *Held*, that out of the sums claimed, that of \$36,129.18 was due by the Moisic Co., and not by the Moisic Iron Co. That the Morris Run Coal Co. owed \$200,000 of the stock of the Moisic Iron Co., which has never been paid for, and that the balance of their claim must be imputed in payment of their stock. *Lynch & Henshaw*, 1 Q. B. R. 242, Q. B., 1881.

#### V. COMPOSITION NOTES.

45. In May 1875, one M. being insolvent, applied to appellant to aid him in obtaining his creditors consent to a composition. Appellant consented on condition that M. would give him a mortgage for \$5,374.11, a bonus of \$600, and a number of effects worth \$250. On these terms the appellant agreed to sign a composition at 50c in the dollar, and to help him obtain the consent of the other creditors. The other creditors accepted the composition, but M. was obliged to promise some of them a bonus, and to give them his personal notes for the remaining fifty cents. M. then applied to the respondent to obtain his endorsement of the composition notes. The respondent agreed to endorse if M. would give him a mortgage to cover his endorsement and also transfer his stock in trade and assets to him. This M. did by deed and on the same day the appellant transferred to the respondent his mortgage, which was worthless as the property was already mortgaged to its full value and had never been registered. At the same time the respondent believing that appellant had made advances of goods to M. endorsed a new note for \$500 and M. gave the appellant his own note for \$100. In 1876 M. having become insolvent, the appellant claimed the entire amount of his debt without reducing it as per composition of July 1875 and based his claim on the old notes which he had retained in his possession. M. before this last insolvency had paid the first of the composition notes, but when payment of the second notes was demanded, respondent (endorser), in consideration of obtaining delay gave a mortgage to secure the last two composition notes as well as the notes of \$500 and that of \$100. The respondent pleaded that the composition of 1875 was simulated and fraudulent, and the obligation last mentioned which was given for delay in the payment of the endorsed notes was made in error and was null and void. *Held* that he was liable, more particularly as he had retained the stock in trade of the insolvent, but was entitled to a deduction of the \$600 bonus received by appellant, and the \$250 in goods



and interest on those amounts. *Martin & Poulin*, 4 L. N. 20 & 1, Q. B. R. 75, Q. B. 1880.

#### VI. COMPOSITION AND DISCHARGE.

47. A deed of composition and discharge signed by the secretary of a company without special power to that effect is invalid. *Bolt & Iron Co'y & Granger*, 7 L. N. 40, S. C. 1884.

#### VII. CONTESTATION OF SECURED CLAIMS.

48. The Consolidated Bank of Canada proved a claim for \$153,464.68 against the insolvent estate of M. & B., secured by the individual liability of H. M. and J. C. B., two of the members of the firm, under a letter of guarantee of the 26th January, 1876, his security valued in the claim at \$75,000, and also an account from M. & B. of mortgages in the property, of W. P. B. for \$37,000 each and valued at \$45,000. The Merchants' Bank proved its claims secured by a transfer of another mortgage on W. P. B.'s property for \$25,000, and which the Bank valued at \$13,000. On the claim made by the Consolidated Bank, L., a creditor of M. & B., contested the transfer made by M. & B. to the Bank of the two mortgages against B's property, and asked that this transfer be set aside as having been made in fraud of the creditors. On the claim of the Merchants' Bank, L., on the same grounds, contested the transfer made to the Bank by M. & B. of their other mortgage on W. P. B.'s property. R and others, also creditors of M. & B., contested the claim made by the Consolidated Bank, the validity and effect, of the letter of guarantee given by H. M. and J. C. B., on their private estates, as being in fraud of the creditors of the firm. *Held*, that as these contestations could not affect the claims of the Consolidated Bank and of the Merchants' Bank against the estate of M. & B., the contestants had shown no interest in their contestations, and that the creditors could only challenge the validity of the security held by the Banks by a direct action in the Superior Court, or by contesting the claims which might be made upon such security on the individual estates of H. M. and of J. C. B., or of W. P. B. respectively. *Consolidated Bank & Leslie*, 1 Q. B. R. 198, Q. B., 1881.

#### VIII. DISCHARGE.

49. Where to an action on a promissory note by a third holder the maker pleaded that he had been insolvent and had included the payee in his list of creditors, and the payee had filed his claim and defendant had since obtained a discharge.—*Held*, that this was no answer to a third holder without proof of compliance, and observance on the part of the defendant of the provisions of sec. 61 of the Insolvent Act of which there was none, nor any proof that plaintiff had

been notified of the petition for discharge. *Bank of America & Copland*, 4 L. N. 154, S. C., 1881.

50. Where an insolvent on his petition for discharge after a year, which was contested by the assignee on behalf of the creditors refused to go into explanations of the deficit in his estate, which was a large one, the discharge was refused. *Mulholland & Fair*, 4 L. N. 333, S. C., 1881.

51. An insolvent in the statement of affairs submitted to the assignee mentioned a promissory note as having been made in June. Being sued on this note, subsequently he pleaded his discharge in insolvency, when it appeared that the note instead of being made in June was made in December. *Held* not discharged. *Arpin & Roy*, 6 L. N. 357, & 28 L. C. J. 38, S. C. R., 1883.

52. The petitioner P. was an insolvent, and applying for his discharge, and opposed by F. The opposition was successful on the ground that the petitioner had not kept proper books of account showing his receipts and disbursements as required by Insolvent Act, 1875. Sec. 56. *Pilon & Foucault*, 6 L. N. 358, S. C. R., 1883.

53. The validity of an assignment in insolvency may be contested on the application of the insolvent for his discharge. *Dillon & Beard*, 7 L. N. 103, S. C., 1883.

54. Le créancier d'un failli pour une somme moindre que \$100, et dont le nom et la créance n'ont jamais figuré au bilan de ce failli, peut exercer ses recours contre lui et contraindre à payer, bien qu'il ait obtenu sa décharge. *Bergeron & Roy*, 7 L. N. 414, C. C., 1884.

#### IX. EFFECT OF ON RENT TO BECOME DUE.

55. Action for rent with process of *saisie gagerie*, the amount over due at the time of instituting action being only \$40, but the larger sum of \$364, to become due by the terms of the lease, was asked on the ground of the defendant's insolvency. Plea that rent not due by the terms of the lease did not become so by the insolvency of the debtor, on the supposition that the gage or security for the rent was not diminished.—*Held* that under Art. 1092 C. C., (1) the debtor loses the benefit of the stipulated term by the mere fact of insolvency, independently of the question diminished security for the rent. *Ménard & Pelletier*. 7 L. N. 15. S. C. & *Hamilton & Valade* *Ib.* S. C. R., 1882-83.

#### X. FRAUDULENT PREFERENCE.

56. G, in 1878, being unable on account of the depression of business to meet his liabi-

(1) The debtor cannot claim the benefit of the term when he has become a bankrupt or insolvent, or has by his own act diminished the security given to his creditor by the contract. 1092. C. C.

lities, applied to his creditors for an extension of time for the payment of their claims, showing a surplus of \$6000, after deduction of his bad debts. The creditors consented to grant his request and agreed to accept G's notes at 4, 8, 12 and 16 months, on condition that the last of them should be endorsed to their satisfaction. N, (the respondent) agreed to endorse the last notes on condition that G., should deposit in a bank in his (N's) name \$15 per week to secure him for such endorsement, and G. signed an agreement to that effect. Thereupon N., endorsed G's notes to an amount of over \$4000, and they were given to G's creditors. On 31st July 1879, G., after having deposited \$2,007.87 in N's name, in the *Ville-Marie Bank* failed, and N, paid the notes he had endorsed, partly with the \$2,007.87. B, as assignee of G., brought an action against N., claiming that the payments made to N., by G., were fraudulent and praying that the money so deposited might be reimbursed by N to B., for the benefit of all G's creditors. *Held*.—Affirming the judgment of the Court of Queen's Bench. 2. Q. B. R. 215, that the arrangement between G. and N., by which the moneys deposited in the bank by G., became pledged to N., was not void either under the Insolvent Act or the Civil Code; there was no fraud on the creditors, nor such an abstraction of assets from creditors as the law forbids, but a proper and legitimate appropriation of a portion of G's assets in furtherance and not in contravention of the rights of the creditors, giving at the most to the surety a preferential security which could not be said to have been in contemplation of insolvency or an unjust preference. *Beausoleil & Normand*. 9. S. C. Rep. 711. Su. Ct., 1883.

57. The defendant was a director of the Exchange Bank which suspended payments on the 17th September, 1883, and had at the time some \$13,000 deposited to his credit in the Bank. The day following the suspension of the Bank, the defendant made his cheque upon the Bank to the amount of \$8000, which was paid by \$3000 in species and a cheque for \$5000 on another bank, and on the 28th of the same month, he received another \$2000 also by cheque on another bank, which was accepted and paid, making in all \$10,000 which he drew from the Bank subsequently to its suspension. *Held* by the Police Magistrate that these acts constituted an undue and unfair preference under 34 Vict. Cap. 5, Sec. 61 (1), and notwithstanding subsequent acts shewing good faith, such as the refunding of the money, the accused was committed for trial, convicted by a jury and sentenced to a few days in gaol. *Regina & Buntin* 7 L. N. 228. Po. Ct. 1884.

#### XI. IMPRISONMENT UNDER ACT.

58. Dans le cours du printemps de 1875, l'appelant fit endosser plusieurs billets et accepter plusieurs lettres de change par l'in-

timé. Dans le mois d'Août suivant, l'appelant a failli, sans éteindre les obligations que l'intimé avait assumées pour lui. L'intimé, alléguant que lorsque l'appelant a obtenu ses endossements et l'acceptation de ses traites, il savait qu'il était incapable de remplir ses engagements, demande par cette action que l'appelant soit condamné à lui payer sa dette et qu'il soit emprisonné en vertu de la section 136 de l'Acte de Faillite de 1875. *Jugé*, que l'appelant n'a pas caché à l'intimé l'état de gêne où il se trouvait lorsqu'il lui a demandé de l'aider de son crédit, et que l'intimité qui a continué d'exister entre les parties, pendant plus de dix mois après la faillite de l'appelant, sans que l'intimé ait porté aucune plainte, et le fait que l'appelant a, depuis sa faillite, payé plus du tiers de sa dette, à même ses revenus personnels, qui étaient insaisissables, excluent toute présomption de fraude de la part de l'appelant, et qu'il n'y a pas lieu d'appliquer la pénalité imposée par la section 136 de l'Acte de Faillite. *Boyer & Barthe*, 1 Q. B. R. 120, Q. B. 1880.

#### XII. INTEREST ON CLAIMS.

59. The creditor of a hypothecary debt, bearing interest due by one of the partners, is entitled to be paid interest in full up to date of collocation, out of the private estate of the partner before the creditors of the firm are entitled to rank against the private estate. *Consolidated Bank & Moat*, 6 L. N. 358, Q. B. 1883.

#### XIII. INTERVENTION IN ACTION AGAINST INSOLVENT.

60. Action on promissory notes made by defendant in favor of M., one of the plaintiffs, and by him, assigned under notarial instrument to his wife, the other plaintiff. The defendant was insolvent and the assignee to his estate petitioned to be admitted an intervening party, alleging that there were good grounds for defending the claim of the plaintiff and of resisting demand of the present action and to be allowed in his quality to contest the suit. The plaintiff demurred on the ground that the action was brought after the insolvency and could not affect the estate assigned, and the demurrer was maintained by the Court of first instance. In Review the judgment was confirmed, the Court saying *per curiam*: "Taking the facts from the petition itself the assignee can have no interest in the action brought by the plaintiff because it cannot affect the insolvent estate represented by him. It might, it is true, in the event of the insolvent being refused his discharge, affect the interests of the creditors beyond and outside of the insolvent estate, but beyond this estate the assignee does not represent the creditors and cannot therefore intervene in their behalf. The intervention moreover fails in another respect to show an interest in the action brought by the plaintiff"

inasmuch as it does not allege that the defendant was unwilling to or had failed to defend himself, and contest the action in a proper and sufficient manner, and it is only the unwillingness or default of their debtor which entitles creditors to take up themselves the contestation of actions brought against him. *Roche & Woods*, 8 Q. L. R. 122, S. C. R., 1882.

#### XIV. KNOWLEDGE OF, *see* PAYMENT IN FRAUD OF CREDITORS.

#### XV. LEASE NOT TERMINATED BY.

61. The lessor of premises occupied by the insolvent, claimed under his lease \$2000 for rent, and \$240 for assessments for the year ending April 30, 1880. Insolvent contested the claim on the ground that the lease had terminated on the 30th April, 1879, by a notice from the assignee on the 31st January, 1879, and by a resolution of the creditors on the 7th February, 1879. *Held*, that the notice by the assignee ought to have been in writing and authorized by the creditors previously, and moreover the creditors were only authorized to terminate the lease at least three months before the time fixed. *Evans & Seybold* 4. L. N. 138. S. C., 1881.

#### XVI. LIABILITY OF CREDITORS FOR COSTS.

62. The creditors are liable individually each for his share of costs made on behalf of an insolvent estate where there are no assets to pay them. *Poulin & Falardeau*. 4. L. N. 317. C. C., 1882.

63. Where an Insolvent Estate has no assets, the creditors cannot be called upon to pay in proportion to the amount of their claims, a judgment obtained against the assignee of such estate. *Dupuy & Union Bank, Dupuy & Walters*, 5 L. N., 371, C. C., 1882.

#### XVII. LIABILITY OF SURETY OF ASSIGNEE.

64. The surety of an official assignee is not liable for a default committed by the latter after his appointment as assignee by the creditors of the estate. *Dansereau & Letourneux*. 5. L. N. 339. S. C., 1881.

65. But held subsequently in the Queen's Bench overruling this that the creditors have recourse against the surety in such cases. *Canada Guarantee Company & McNichols*. 6. L. N. 323. Q. B., 1883.

#### XVIII. OF DEBTOR DOES NOT AFFECT THE RIGHT OF THE PLAINTIFF WHO HAS JUDGMENT, ON THE DECLARATION OF A GARNISHEE.

66. Judgment on the declaration of a garnishee operates a judicial assignment to the plaintiffs, and an opposition subsequently filed by another creditor alleging insolvency of the defendant (as of date of opposition), and asking that the money be paid into Court is insufficient, and will be rejected on motion. *Taylor & Brown*, 7 L. N. 62, S. C., 1884.

#### XIX. POWER OF JUDGE IN.

67. Under the Insolvent Act of 1875, a judge in chambers had power to decide as to the nullity of a deed and to declare it void. *Lévy & Bouchard*, 7 Q. L. R. 224, S. C., 1881.

#### XX. PROCEEDINGS AGAINST INSOLVENT ESTATE.

68. Under section 50 of Insolvent Act of 1869, and section 125 of Insolvent Act, 1875, all proceedings to establish a right of property in goods in the hands of the assignee must be by order of the judge, or of the Court on summary petition and not by ordinary action. *Fair & Désilets*, 1 Q. B. R. 212, Q. B., 1881.

#### XXI. PROCEEDINGS FOR RENT UNDER.

69. The summary procedure provided by the Insolvent Act, 1875, for the recovery of rent due by the insolvent excluded the recourse by *saisie-gagerie* provided by the Code of Procedure. *Beausoleil & Frigon*, 1 Q. B. R. 70, Q. B., 1880.

#### XXII. PROOF OF COLLUSION IN.

70. A writ of attachment issued under the Insolvent Act, 1875, upon information given by the insolvent himself was held not to constitute a fraudulent collusion entitling the other creditors to ask that the proceedings in insolvency be quashed. *Davidson & Lajoie*, 1 Q. B. R. 285, Q. B., 1881.

#### XXIII. PROOF OF SUFFICIENT TO SET ASIDE A HYPOTHEC, *see* HYPOTHEC.

#### XXIV. REMUNERATION OF ASSIGNEE.

71. The Judge has a right, in insolvent matters, on petition of the creditors, and after hearing of the parties, to revise the assignee's bill after taxation. *Fraser & Darling*, 1 Q. B. R. 217, Q. B. 1880.

72. The assignee to an insolvent estate advertised for sale certain lots of land, to be sold subject to the hypothecs with which they were burdened. The sale took place according to the terms and conditions and were bought in by the company petitioner, who were the mortgagees, for the nominal sum of five dollars. The assignee claimed his commission of 2½ per cent on the whole of the price that is to say the amount of the mortgage on each lot together with the five dollars bid. *Held* that he was entitled to it. *David & Beausoleil & The Trust & Loan Co.*, 25 L. C. J. 156, S. C. R. 1880.

#### XXV. REMUNERATION OF TRUSTEES.

73. The question was whether the assignees of the estate was Messrs. O. N. E. B. and O. H. —should be paid for their services as such in preference to all other creditors. *Held* that as the assignees had worked for the benefit of

the creditors in general, having given notice of their quality, received the accounts of said creditors, made a detailed inventory and statement of the estate, submitted their inventory to the creditors in assembly, who had discussed the same and who finally had appointed a committee to look further into matters, the creditors had thus benefitted by the work of the assignees, and had virtually accepted them as their mandataries. A voluntary assignment as the one made by P. & B. to the assignees, was recognized by law under Art. 799 of the Code of Civil Procedure, and is a mandate which the insolvents were forced to give, if they wished to avoid the issuing against them of a writ of *capias*. The assignees had not, perhaps, been able to liquidate the estate, but this was owing to the want of legislation on the point, and what they did was nevertheless within the limits of the functions conferred upon them by law. The lack of success of the assignees was not their fault, but the creditors' who had not all joined in to liquidate the estate out of court. *Bourgeois & Piedalue*, 7 L. N. 391, S. C. 1884.

#### XXVI. RIGHTS OF CREDITORS.

74. Where a commercial firm being creditors of an insolvent took action under section 68 of the insolvent Act, 1875, to recover money paid to the appellants after the insolvency. *Held* reversing the judgment of the Court of Review (1) that as the appellants had received the amount on conservatory process that there was no fraud and they had as great a right to it as the respondents. *La Banque Jacques Cartier & Beausoleil* 4. L. N. 116, & 1 Q. B. R. 151. Q. B. 1881.

75. Where an insolvent trader made an assignment to three persons for the benefit of his creditors, and the plaintiff who had obtained judgment against him took a *saisie-arret* in the hands of the assignees.—*Held*, that the assignment was but a mandate which did not prevent the seizure and sale of the insolvent effects at the suit of the creditor who was not a party to the assignment. *Tourangeau & Dubeau*, 10 Q. L. R. 92, S. C., 1884.

76. The respondents, who were creditors to an amount exceeding \$4,000 of the insolvent firm of C and M, complained that (the appellants) had received from C & M a sum of \$3,824 while the latter were insolvent, and the object of the action was to have appellants ordered to pay this money into court for the benefit of C & M's creditors generally. The appellants demurred to the action, on the ground that the respondents were not entitled to come into court individually and (without alleging any transfer to themselves of the rights of the other creditors,

or any authorization by the creditors) claim to have the payments set aside. *Held* that a creditor who alleges that his debtor while insolvent had made payments to another creditor, knowing his (1) insolvency, has a right under Art. 1036 C. C., to sue the latter in his own name and to ask that such sums be paid into court for the benefit of the creditors generally. *Boisseau & Thibaudeau*. 7. L. N., 274 Q. B., 1884.

#### XXVII. RIGHT OF INSOLVENT TO RETURN GOODS.

77. Plaintiff was the assignee of one H. and defendants were wholesale dry goods merchants of Montreal. The action was instituted under Secs. 132-133-134-135 of the Insolvent Act, 1875, to recover goods alleged to have been retransferred to defendants by H. within thirty days of his insolvency, and with a view of giving him a fraudulent preference, over his other creditors. The evidence showed that the goods were shipped on the 16th and 18th March, and that H. declared he would not take delivery of them, that the goods were brought to H's store without his knowledge by a public carter, who had carted for him for years, who was in the habit of bringing packages from the station whenever he found them there without special instructions; that H's clerk took them in and opened them, and took out the goods but did not mix them with the other goods, but kept them separate; that when H. found they had been taken out of the cases he said he would not keep them and refuse to allow his clerk to mix them with his stock or to break in on the lots, but ordered them to be kept separate and that they should be returned to defendants. The goods were then put back in their cases, and the next day, 20th March, returned to the defendants, at Montreal, and were delivered to them on the 24th March. *Held*, there was no intention on the part of the Insolvent to take possession, and action dismissed. *Darling & McIntyre*, 4 L. N. 118, S. C. R., 1881.

#### XXVIII. RIGHTS OF PRIVATE AND FIRM CREDITORS.

78. *Held*, that where there is a surplus in the private estate of one member of an insolvent firm, after paying his creditors the amount of their claims as filed, but a deficiency in the firm estate to pay firm creditors, the latter has no claim upon such surplus until the private creditors, who have interest bearing claims, have been paid interest upon the amount of their claims, from the date of filing

(1) Every payment by an insolvent debtor to a creditor knowing his insolvency, is deemed to be made with intent to defraud and the creditor may be compelled to restore the amount or thing received or the value thereof, for the benefit of the creditors according to their respective rights. 1036 C. C.

the same till payment. *Mulholland & Merchants' Bank of Canada*, 6 L. N. 171, S. C., 1883.

#### XXIX. SALE OF BOOK DEBTS.

79. The purchaser of books debts from the assignee of an Insolvent must, in order to obtain judgment in virtue of such sale, produce the authorization of the creditors to the assignee to make the transfer and the declaration in the act of sale or transfer made by the assignee himself that he is authorized is not sufficient. *Tourville & Patrick*, 11 R. L. 442 Q. B. 1882.

#### XXX. SALE OF INSOLVENT ESTATE.

*Case of Dixon & Perkins* (II. Dig. 396-193) reported in *extenso* 25 L. C. J. 117 Q. B. 1880.

#### XXXI. SURETIES NOT AFFECTED BY DISCHARGE IN.

80. Defendant became security for F. F. to his creditors, the plaintiffs. The amount of his indebtedness was stated in the *Acte de Cautionnement* at \$2,278.82 and the different sums due in notes and cheques were all specified. There was also a stipulation in the deed that the liability of the caution should be continued to the whole amount, notwithstanding any settlement of accounts or renewals of notes between the creditors, and the principal debtor, or any further security they might obtain. *Jugé. Que dans le cas de composition et décharge entre un débiteur ou ses créanciers; lorsque l'acte a lieu non pas à raison de l'intention des créanciers de donner au débiteur le montant de ses créances, mais parce qu'ils ne peuvent pas avoir plus, la dette naturelle continuant à exister, la caution solidaire n'est pas déchargée.* *Leclaire & Forest*, 7 L. N. 383 & M. L. R. 1 S. C. 113. S. C. R. 1884.

#### XXXII. STATUS OF ASSIGNEES *see* ACTION INTEREST IN.

#### XXXIII. TRANSFER FOR BENEFIT OF CREDITORS IN THE ABSENCE OF INSOLVENT ACT.

81. Un négociant en l'absence d'une loi de banqueroute peut sous le droit commun faire cession de ses biens à l'un ou à plusieurs de ses créanciers pour le bénéfice général de tous. *Lanouette & Tourgas*, 6 L. N. 123 S. C. 1883.

82. Le créancier qui a reçu telle cession peut disposer de l'actif à lui cédé, et à moins que fraude ne soit prouvée, les actes du cessionnaire seront maintenues. *Id.*

#### XXXIV. WHAT CONSTITUTES.

83. Action upon a promissory note dated 1st September 1881 and payable at six months, due 4th March, 1882. Plaintiff alleged the insolvency of the defendants and contended that in consequence they could not claim the

benefit of the term. — *Held*, that a company ceasing to meet its ordinary payments as they become due, though its nominal assets may be equal to its liabilities, will be deemed insolvent, and cannot claim the benefit of the term upon a promissory note not yet due. *Corcoran & Montreal Abattoir Co.*, 6 L. N. 135, S. C. 1882.

84. A firm which has ceased to meet its ordinary payments as they become due, will be deemed insolvent within the meaning of 1092 C. C., and the insolvency of the firm entails that of the partners individually. *Ontario Bank & Foster*, 6 L. N. 398, S. C. 1883.

#### XXXV. WINDING UP OF BANKS, CORPORATIONS, COMPANYS, &c., *see* C. 45 VICT., CAP. 23, & C. 46 VICT., CAP. 23.

### INSPECTION LAW.

I. ACTS AMENDING, *see* C. 44 VICT., CAPS. 22, 23; C. 45 VICT., CAPS. 25 & 26; C. 46 VICT., CAP. 29; C. 47 VICT., CAP. 33; C. 48 & 49 VICT., CAP. 66.

#### INSPECTION OF TIMBER—*See* TIMBER.

#### INSPECTOR OF ROADS—*See* CIVIL SERVANTS.

#### INSTITUTEURS.

I. MEANING OF—*See* SCHOOL TEACHERS.

#### INSTRUMENTS—*See* DEEDS.

#### INSULTING CONDUCT.

I. WHAT IS, *see* DAMAGES.

### INSURANCE.

I. ACTS RESPECTING MUTUAL COMPANIES.

II. AGAINST NEGLIGENCE OR DISHONESTY.

III. ATTACHMENT OF ASSESSMENT.

IV. CONSENT WHEN REQUIRED MUST BE IN WRITING.

V. ERROR IN POLICY.

VI. EXHIBITS IN ACTIONS BY.

VII. FIRE.

*Conditions of Policy.*

*Delay to file claims.*

*Interest in Policy.*  
*Misrepresentation.*  
*Rights of insured.*  
*Waiver of conditions of Policy.*

## VIII. INSPECTIONS OF COMPANIES.

## IX. INTERIM RECEIPT.

## X. LIABILITY OF MUTUAL POLICY HOLDERS.

## XI. LIFE.

*Premium Notes.*

*Rights of Creditor of assured when  
 Policy payable in Foreign Country.*

## XII. MARINE.

## XIII. MUTUAL.

*Action for Assessment.*

*Liquidation of.*

*Rights of Foreign Companies.*

## XIV. OVER VALUATION.

## XV. PROOF OF MEMBERSHIP.

## XVI. TRANSFER OF POLICY.

## XVII. VARIANCE BETWEEN APPLICATION AND POLICY.

## XVIII. WARRANTY.

## XIX. WINDING UP OF COMPANIES WHEN INSOLVENT.

I. ACTS RESPECTING MUTUAL COMPANIES, *see* Q. 44 & 45 VICT., CAPS. 24 & 25; Q. 45 VICT., CAPS. 50 & 51; Q. 48 & 49 VICT., CAP. 49.

## II. AGAINST NEGLIGENCE OR DISHONESTY.

85. Case of *Citizens' Insurance Co. & Grand Trunk Railway Co.* (II Dig. 400-208) reported *in extenso*, 25 L. C. J. 163, Q. B. 1880.

86. The teller of a bank endorsed on a parcel of bank notes the amount which it was supposed to contain. It was subsequently discovered that the parcel was \$6,300 short and it was ascertained that a deficiency of the same amount existed in the teller's accounts and had been during several years skilfully covered up and concealed from the authorities of the bank who had made the usual inspections.—*Held* that a guarantee insurance company, which had guaranteed the fidelity of the teller was liable for the deficiency, but only to the extent which occurred after the contract was made. *La Banque Nationale & L'Espérance*, 4 L. N. 147, S. C. 1881.

## III. ATTACHMENT OF ASSESSMENT.

87. In the absence of fraud, negligence or maladministration, it is not competent to a judgment creditor of a Mutual Fire Insurance Co. of the Province of Quebec to attach moneys payable to the company by way of assessment under the provisions of the liquidation statute, 28 Vic. Cap. 13. *Lavoie & Mutual Fire Insurance Co. of Hochelaga*, 26 L. C. J. 166, S. C. 1882.

## IV. CONSENT WHERE REQUIRED MUST BE IN WRITING.

88. The statutory requirement applicable to insurance in Mutual Insurance Companies that the consent of the Directors to a double Insurance must be signified by an en-

dorsement on the policy or other acknowledgment in writing is not satisfied by a mere knowledge by the insurers of other insurances. *Dustin & Hochelaga Mutual Fire Insurance Company*. 4. L. N. 295. S. C. R., 1881.

## V. ERROR IN POLICY.

89. Action on a premium note given for a life insurance policy. Plea that the policy was different from what was agreed upon between defendant and the plaintiff's agent. The policy was payable at death only, whereas it was to be made payable in twenty years. The evidence was conflicting but in review *held*, reversing the first judgment, that the defendant evidently understood that it would be made payable in twenty years and action dismissed. *Sun Mutual Life Insurance Company & Beland*. 5. L. N. 42. S. C. R., 1881.

## VII. FIRE.

90. *Conditions of policy*.—Case of *Connolly & Provincial Insurance Company* (1) with respect to the words "to go out in tow" reversed in Supreme Court and judgment of Superior Court (2) restored. 5. S. C. Rep. 258. Su. Ct. 1879.

91. Where after a fire the insurers and the insured proceed amicably to an estimate of the loss without requiring the observance of forms laid down in the conditions of the policy and on which they had a right to insist they will be held to have waived such formalities, and the report of the experts cannot be set aside for want of them. *Demonigny & Compagnie d'Assurance Agricole de Watertown*. 2. Q. B. R. 27. Q. B., 1881.

92. Action against an Insurance Co. on a policy of insurance by which the plaintiff stock-in-trade, consisting of fancy goods, was insured against loss by fire. The principal plea of the Co. was to the effect that contrary to a condition endorsed on the policy a sale and transfer of the goods of plaintiff had been made to one F. in consideration of a certain suretyship entered into by F. in favor of plaintiff's brother, in order to obtain the release of the brother from jail. To this the plaintiff answered that there had been no delivery of the effects mentioned in the deed of sale; that the stock had always remained in plaintiff's possession and the deed was without effect. Condition No. 2 on the back of the policy was as follows: "Without written permission of the Company it will not be liable for loss or damage if any change takes place in the occupation, location, title or position of the property herein specified. In every case without such permission this policy is void and all insurance thereunder immediately ceases and determines." The sale to F. was before Notary and was to be void at

(1) I. Dig. 403-219.

(2) 8. Q. L. R. 74.

the expiration of the suretyship which however did not occur until after the fire. *Held* that the policy was null. *Semmelhaack & Canada Fire & Marine Ins. Co.* 4 L. N. 205, S. C. 1881.

93. In an action for loss by fire under a policy of insurance, *Jugé* Que l'obligation pour l'assuré, qui n'est pas propriétaire, de déclarer son intérêt dans la chose même lorsqu'elle est une garantie ou condition de la police, n'est qu'une nullité relative qui ne peut être invoquée que par l'assureur; et que celui-ci est présumé y avoir renoncé lorsque, connaissant l'existence de ce moyen d'annulation, il ne s'en prévaut pas, et reconnaissant subsistante l'obligation que lui fait la police. *St. Amand & Cie. d'Assurance de Québec*, 9 Q. L. R. 162 S. C. 1883.

94. Et qu'il en est de même pour toutes les garanties et entr'autres pour celle par laquelle l'assuré s'oblige de fournir à l'assureur, dans les 14 jours du sinistre un état détaillé de sa perte; mais que l'assureur quoiqu'il ne se prévaille pas de l'expiration du délai conserve intacts ses droits à la production de cet état en le demandant ou objectant à l'insuffisance de la réclamation produite, et en la renvoyant pour cette raison. *Id.*

95. *Delay to file claim.*—Action to recover under a fire policy for loss by fire. Plea, that the plaintiff claimed for her absentee husband, the owner of the property and had no quality to claim; that the party insured had no insurable interest; that it was a condition of the policy that unless a claim were made within three months after the fire that all benefit under the policy should be forfeited and that no claim was made within three months; that an irregular illegal claim made by plaintiff within twenty days after the fire was immediately rejected, and no action was taken within twelve months, and it was a condition that unless action was taken within three months after rejection the claim should be forfeited. *Held* that the claim was too late. *Armstrong & The Northern Assurance Company*, 4 L. N. 77 S. C., 1881.

96. *Interest in Policy.*—The husband of the plaintiff (deceased) in 1877, insured in the office of the defendant, the furniture in the house in which he lived, the house itself and the house adjoining. The furniture belonged to him, but the two immoveables belonged to him only in usufruct, the *nu-proprieté* being in his children by a previous marriage. These insurances were still in existence when the property was destroyed by the great fire of June, 1881. The husband of plaintiff died the 18th July following, leaving the plaintiff his universal legatee. The two houses were insured together for \$800, of which the company, defendant, paid \$775 to the actual owners and received from them a guarantee against any trouble on the part of the plaintiff. The owners were therefore called in *en garantie* admitted their ownership and pleaded a variety of pleas by intervention, some belonging to the company and some to

themselves as proprietors, all of which were dismissed on the principle that the contract of assurance against fire is personal and is not an accessory of the property; that by it no one is insured but he whom the company at the time of issuing the policy undertakes to indemnify, and in consequence that the defendants *en garantie* and intervenants had no right to any part of the insurance money. *St. Amand & Cie. d'Assurance de Québec*, 9 Q. L. R. 162, S. C., 1883.

97. And on the other hand, that the plaintiff, as legatee of the usufructuary, could only recover an amount proportional to her interest, and as there was no proof of what it amounted to, her action would be dismissed. *Id.*

98. *Misrepresentation.*—Action on an insurance policy issued by respondents by which they insured certain articles known as scythe sharpeners, which the appellants were manufacturing, as well as the materials used by appellants for their manufacturing establishment for the sum of \$800.00. After the insurance was effected, the appellants move their manufacturing establishment into a new building and obtained the consent of the Respondents that the policy already effected should cover the risk in the new building. The Respondents to the action pleaded that the insurance had been obtained by false and fraudulent representations as to the value, nature and quality of the goods insured, that subsequently to the issuing of the policy, the appellants represented that the risk in the new building was not increased, when in fact it was materially increased, that the appellants sustained no loss nor damage, as the articles insured were worthless, and further that no expertise was ever had, as required by law. The Court below dismissed the action, but in Appeal judgment reversed on the ground of want of proof of fraud or misrepresentation. *Holmes & Mutual Fire Insurance Company of Stanstead and Sherbrooke*. 1 Q. B. R. 84, Q. B. 1880.

99. *Rights of insured.*—It is not competent to a person insured in a mutual insurance company when called upon to pay assessments on his premium note to compel the Company to enter into a detailed statement of the losses in order to establish the correctness of the assessments made by the directors. The latter in making the assessments are the agents of the insured, who in the absence of fraud is, *quoad* such assessments, bound by their acts and by the terms of the premium note. *Giles & Brock*. 5 L. N., 369, C. C. 1882.

100. *Waiver of condition of Policy.*—By a condition in a policy of fire insurance the insured was required on pain of forfeiture, to notify the company of any other insurance effected on the property. The Company, after the fire and after knowledge that other insurances had been effected, supplied forms for making claims and joined in an arbitration to settle the amount of damage and otherwise treated the contract as binding on

the company. *Held* that this was a *waiver* of all objections based on the condition requiring notice of other insurance. *Fonderie de Joliette & Compagnie d'Assurance de Stadacona*. 6 L. N. 277 & 27 L. C. J. 194. Q. B., 1883.

VIII. INSPECTION OF COMPANIES *see* Q. 45 VICT. CHAP. 49 and Q. 46 VIC. CAP. 19.

#### IX. INTERIM RECEIPT.

101. The defendant granted the plaintiff an interim insurance receipt containing the following conditions: Subject to.....the approval of the directors which will be signified by the issue of policy within thirty days from date.....Notice of rejection of risk received at the post office address of applicant as given in application cancels this receipt and insurance if not otherwise conveyed." *Held*—that the mere lapse of the thirty days without the issuing of any policy did not put an end to the insurance effected under the receipt. *Turgeon & Citizens' Insurance Co.* 9 Q. L. R. 78, S. C. R. 1883.

#### X. LIABILITY OF POLICY HOLDERS.

102. The defendants on the 5th December, 1878, obtained from the plaintiffs a policy of insurance for \$2000 on account of which they gave a deposit note for \$160 for the balance of which the action was brought. Plea that on the first of March, 1880, the policy which they had held was cancelled by the plaintiff and notice thereof given to the defendants, and that on the said 1st March, 1880, defendants had paid all dividends and calls made on the said note, and were entitled to have it cancelled and returned to them. On the part of the plaintiff it was contended that the onus was upon the defendants to show that the assessment sued for was for losses subsequent to the cancellation of the policy. *Held* that as regards the defendants the resolution making the call should have stated that it was necessary for the payment of losses incurred before the first of March; and the burden of proof was on the plaintiff to show that it was so. *Hochelaga Mutual Insurance Co. & Girouard*. 7 Q. L. R. 348, S. C. R. 1881.

103. Dans les poursuites intentées par une Compagnie d'Assurance Mutuelle pour répartir des pertes par elles subies, sur les billets de primes des assurés, elle est tenue de prouver que la répartition a été faite par nécessité, pour réparer des pertes actuellement encourues par la Compagnie depuis la signature du billet de prime, et que la répartition a été faite proportionnellement du dit billet. Que le défendeur sera admis à prouver que la répartition a été faite sans nécessité et est frauduleuse. *Compagnie d'assurance Mutuelle & Proteau*, 6 L. N. 85, C. C. 1883.

#### XI. LIFE.

104. *Premium notes*.—Action for \$225,

amount of a promissory note. Plea no consideration and that the plaintiff had represented to defendant that he was an agent of the *Etna Life Insurance Co.* of Hartford, and as such, induced plaintiff to take out a policy of insurance on his life for \$5000, in consideration of the annual payment to said company of \$225, for which sum said note was made. That said note was not given to defendant personally but to the company, and when the policy issued it was upon condition of defendant's paying the company an annual premium of \$315. The defendant refused to accept said policy when the same was offered to him and returned it to the company, who accepted and still held the said policy. That no privity of contract respecting the note ever existed between plaintiff and defendant. *Held* that there was privity of contract between the agent and the maker of the note, and the note being given for good and valid consideration, the agent could maintain an action upon it. *Alexander & Taylor*, 25 L. C. J. 252, S. C. R. 1880.

105. *Rights of creditor of assured where policy payable in foreign country*.—The appellants were a life insurance company incorporated in the United States, having their head office in the city of New York, and a branch of their business in Canada, with an agency established in Montreal. The respondent represented a creditor of a policy holder in Canada, whose life was assured by the appellants and who died at Montreal on the 6th October, 1877. Notice and proof of his death were duly furnished to the agent of the company at Montreal, and by him transmitted to the head office at New York. On the 5th November following, a Canadian creditor of the assured took out a seizure before judgment at Montreal, and with it lodged an attachment by way of garnishment in the hands of the Company, serving it upon the agent of the Company in Montreal. The agent made a declaration in conformity with the facts and the seizure being found irregular was dropped. In January following, the seizure was renewed in the hands of the Company's agent at Montreal, but in the meantime a brother of the assured resident in Montreal had gone to New York and had been duly named and appointed executor and administrator to the estate of the deceased. In December, 1877, he instituted a suit against the Company in the Superior Court New York, for the recovery of the amount of the indemnity due under the policy. The Company therefore were exposed to two separate demands for the amount of the policy. In May, 1878, the Company obtained leave of the Court at Montreal to make a new declaration in which they repeated all the facts of the proceedings at New York, and added the fact that notwithstanding their defense to the suit there on the ground of the attachment at Montreal, the Superior Court at New York had condemned them to pay to the executor and administrator there, the amount of the in-



demnity due under the policy, which they had accordingly paid to him and obtained a full discharge. The creditor seizing having become insolvent, the respondent was appointed his assignee and the declaration of the Company was contested. The Superior Court at Montreal maintained the contestation principally on the ground that under the provisions of the Statute 40 Vic. Cap. 42, the policy in question was a Canadian policy; that the deposit made by the Co. under that Statute was for the security of Canadian policyholders, and that the judgment of the Superior Court in New York was of no force in Canada to defeat the claims of the creditors of the estate of the assured who had his domicile and died in the Province of Quebec, and whose estate was liable to distribution according to the laws of this Province. *Held*, reversing the judgment of the Court below, that although the policy was a Canadian policy according to the meaning of the statute referred to that the contract was nevertheless a New York one, and payment of the amount covered by the policy must be demanded there, before the Company could be considered in default. *Equitable Life Ass. Co. & Perrault*, 26 L. C. J. 382, Q. B. 1882.

106. Nevertheless in case of the insolvency of the Company the assured would have a right to rank with Canadian policyholders on the special deposit made under said Statute but although the assured died in Montreal, payment under judgment of the Superior Court at New York to the administrator of the assured's estate at New York, was a complete bar to any suit for the recovery of the amount of the policy in Montreal. *Id.*

## XII. MARINE.

107. The owner of a cargo insured has the right to recover the amount of the insurance, if the loss of the barge containing the cargo is not due to the fault of the insured or was within his control. *Nickle & The Mutual Ins. Co. of Buffalo*, 12 R. L. 667, Q. B. 1864.

108. Case of *Leduc & The Western Assurance Co.* (II Dig. 411-255) reported in *extenso*, 25 L. C. J. 55, Q. B. 1880.

109. Action by the owner of the schooner "Providence" for \$3,130.37, being for a total loss of the vessel and a proportion of costs of repairs made to her, anterior to the disaster which caused the total loss of the vessel. When the insurance was effected the vessel was at Montreal about to leave on a voyage to Mingan, north of the Gulf of St. Lawrence, thence to Rigolet, coast of Labrador, passing by Cow Bay, Cape Breton, and return to Montreal. The insurance was effected on the hull, rigging, apparel and appurtenances of the schooner "Providence" to the amount of \$2,000, from noon on the 2nd June, 1868, to noon on the 15th November of the same year, with liberty to navigate the interior waters and also the Gulf to the lower provinces. She left Montreal, reached Mingan and set sail thence to

Cow Bay, which she reached, in safety, and left thence for Rigolet on the 31st July, with a cargo of coal, but when near the port of Sydney next day under stress of weather she made so much water that she was obliged to put into Sydney for repairs, where the captain made his protest in due form, whereof notice of the facts was then given the Western Assurance Co., who acquiesced in the necessity of repairs being made. She was examined by competent parties, the repairs considered necessary made, and then being judged to be seaworthy she sailed again, but the weather was so stormy that the crew, to save themselves, were obliged on the 31st August, to run the vessel ashore on the east end of the Island of Anticosti, where she became a total wreck. The plea was that the vessel was unseaworthy, which became apparent by her leaking as soon as she left Cow Bay with a cargo of coal, that she was insufficiently repaired without a prior survey as required by the policy, and without the discharge of the cargo which ought to have been done to enable the repairs to be effectively made, and she started after the repairs in an unseaworthy condition. *Held* that when a vessel is seaworthy at the point of departure named in the policy, the risk attached from the time she left port, and that under the sue and labor clause, the assured had a right to recover the proportion of the costs of repairs caused by striking on said rock which the value of the vessel bore to the sum insured in addition to the sum insured, the vessel having been wrecked subsequently to the making repairs (1). *Leduc & The Western Assurance Co.*, 25 L. C. J. 280, Q. B. 1881.

110. In 1879, the respondent was registered owner of the vessel *Matilde Octavie*, but in reality he was owner of only  $\frac{1}{3}$ , the other  $\frac{2}{3}$  of which belonged to the Captain. On a voyage from Montreal to Monte Video the vessel foundered, twenty minutes afterwards it floated again, and subsequently was brought into the port of Monte Video, where he reported the matter to the English Consul and the boat was examined and condemned by the Inspectors; after notice to the Insurers the vessel was sold by public auction in presence of an agent of the Insurers, and after deduction of what was realized, action was brought for the balance. *Held* in an action for total loss, on a policy of Marine Insurance the plaintiff may recover as for a partial loss. *Merchants' Marine Insurance Company & Ross*, 10 Q. L. R. 237, Q. B., 1884.

## XIII. MUTUAL.

111. Persons who become members of a mutual insurance company and pay premiums under 40 Vic. Cap 72 Sec. 35, are liable as members for assessments for losses and arrears of Directors' fees cannot be offered in com-

(1) See II Dig. 411-255.

pensation of an assessment to meet specific losses. *Hochelaga Mutual Fire Insurance Company & Lefebvre*. 6 L. N. 236. S. C., 1883, and 7 L. N. 226. Q. B., 1885.

112. And *Held*, also (reforming in this respect the judgment of the Superior Court.)—That although fees due appellant as Directors could not be set up in compensation against such extra assessments yet as the company and liquidators had agreed to allow such fees in reduction thereof, the appellant ought not to be condemned for more than respondents had agreed to accept. *Ib*.

113. *Action for assessments*.—In an action against a Mutual Insurance Company, *Held*, that as it was neither alleged or proved what was the effect of the loss sustained at the period at which it was sustained, nor the amount nor expense of the Company, nor why they were insured, that the action was properly dismissed. *Mutual Fire Insurance Co. of Joliette & Dupuis*, 28 L. C. J. 179, Q. B., 1884.

114. *Liquidation of*.—In 1880 the defendant took out two policies of insurance with the company plaintiff, and gave two notes for the premium. By these notes the defendant promised to pay "*toutes sommes d'argent que les directeurs pourraient de temps à autre exiger, pourvu que telles sommes et le montant endossé sur icelles n'excédât pas les montants des billets*." The company went into liquidation in 1881, and on an action by the liquidators against the defendant for an assessment for losses.—*Held* that the liquidators of a Mutual Insurance Company could not recover such assessments without strict proof of the losses incurred, and of the debts and expenses which have rendered such an expenditure necessary, nor without strict proof of the observance of all the formalities required by the Statute, and that in default of this the action was properly dismissed. *Mutual Insurance Co. of Joliette & Bourgouin*, 10 Q. L. R. 110, S. C. R., 1884.

115. *Right of foreign Companies*.—Action to recover the amount of an assessment due upon a premium note. Plea that since the passing of the Dominion Insurance Act of 1877, Mutual Fire Insurance Company, having their head office in the Province of Ontario, had no right to do business in the Province of Quebec. *Held* that the Company having its head quarters in the City of Hamilton, Ont., and doing business in the Province of Quebec previous to 1877, had a right to do business in this Province since. *Victoria Mutual Fire Insurance Co. & Mullin*, 6 L. N. 390, C. C. 1883.

#### XIV. OVERVALUATION.

116. Where the value of the property is not easily arrived at and the evidence is conflicting, a claim will not usually be held to contain an overvaluation unless the amount demanded be about double the actual value.

*Northern Assurance Co. & Prévost*, 25 L. C. J. 211, Q. B. 1881.

#### XV. PROOF OF MEMBERSHIP.

117. Where under judgment against a Fire Insurance Company, the plaintiff caused a seizure to be made in the hands of one of its members, on moneys due by him to the company. *Held*.—*Que le certificat du secrétaire de la société défenderesse attestant que le tiers-saisie était endetté envers elle en la somme y mentionnée, doit être considéré comme une preuve légale et suffisante, en autant qu'il est conforme aux dispositions du Statut d'Ontario*, 36 Vict. Ch. 44, S. 48, et que ce certificat suffit pour établir d'une manière légale la répartition ou cotisation invoquée par le demandeur contre le tiers-saisie. *Cadioux & Can. Mutual Fire Insurance Co.* 28 L. C. J. 199, S. C. R. 1879.

#### XVI. TRANSFER OF POLICY.

118. P. transferred to appellant two insurance policies issued by respondent. Subsequently the property insured was destroyed by fire, but after P. had ceased to have any interest in such property. On a claim by appellant to recover the amount of such policies.—*Held* that the assignee of a policy issued by a Mutual Insurance Co. can only exercise such claims as the transferor himself could have done, and that in the case in point, P. having ceased to have any title to the property insured, when the fire occurred, could not recover the amount insured under the policies aforesaid, and that the appellant was therefore debarred from such claim. *Willey & Mutual Fire Insurance Co. of Stanstead*, 2 Q. B. R. 29, Q. B., 1881.

#### XVII. VARIANCE BETWEEN APPLICATION AND POLICY.

119. In an action for loss by fire under an insurance policy,—*Held*, that when the application is referred to in the policy as forming part thereof, it will control the provisions of said policy, when there is a variance with respect to the description of the premises insured, and that a misdescription in the policy, inserted there by the agent of the company, will be deemed the fault of the company. *Vézina & Canada Fire & Marine Insurance Co.*, 9 Q. L. R. 65 S. C., 1883.

120. And that under the circumstances, parol evidence will be admitted to prove the intention of the assured. *Ib*.

#### XVIII. WARRANTY.

121. Action on a fire insurance policy for \$1200. By the action \$1000 was claimed and by the judgment appealed from \$800 was allowed. The company resisted on two grounds.—First, that the house which was of wood was to be covered with brick and that it had not been so covered before the fire. The insurance

which was effected in March, 1877, was renewed in March, 1878, the house still being uncovered. *Held* to be no warranty. *Northern Assurance Co. & Prevost*, 25 L. C. J. 211 & 4, L. N. 254 & 1 Q. B. R., 278, Q. B., 1881.

XIX. WINDING UP OF COMPANIES WHEN INSOLVENT. C. 47 VICT., CAP. 39.

## INTERDICTION.

I. OF HABITUAL DRUNKARDS.

II. POWERS OF PROTHONOTARY.

I. OF HABITUAL DRUNKARDS, *see* Q 47 VICT., CAP. 21.

II. POWERS OF PROTHONOTARY.

122. The prothonotary of the Superior Court has under Art. 1399 C. C. P., concurrent jurisdiction with the judges of the Superior Court to pronounce interdictions and to create a curator for the interdict, and the sentence he may render in such matters, takes effect from the day it was rendered, notwithstanding revision or appeal, and during such revision or appeal the curator thus appointed may sue the previous curator *en reddition de compte*. *Clement & Francis*, 12 R. L. 567, S. C., 1881.

## INTEREST.

I. ON CLAIMS IN INSOLVENCY, *see* INSOLVENCY.

II. PRESCRIPTION OF.

III. PRIVILEGE FOR.

IV. RIGHT OF CORPORATIONS TO CHARGE INTEREST.

V. RIGHT OF EXECUTOR TO CHARGE.

VI. RIGHT TO.

II. PRESCRIPTION OF.

123. Action to recover \$2508.50, balance of the capital of the price of sale of certain immoveable property by plaintiff to defendant, under deed executed, 9th February, 1870, and registered 18th February, and for arrears of interest. On the 31st March, 1876, the plaintiff registered a memorial of five years, due under said deed on the 1st March, 1876, amounting to \$1004.75. Defendant paid various amounts on account of the arrears of interest leaving a balance accrued to the 28th March, 1880, of \$1480. Action hypothecary for \$2508.50 capital and \$1490 interest, and interest on the capital from March, 1880, at the rate stipulated in the deed, and on the \$1480, at 6 p. c. from service of process. Defendant tendered the interest for five years back from the date of action and pleaded that all the rest was

prescribed. Plaintiff answered in law that the five years prescription did not apply to interest registered under Art. 2125 C. C. (1) Plaintiff also pleaded the payment on account of it, as interruptions of prescription. *Held* in Review confirming the judgment of the first court, which rejected all plaintiff's pretensions and maintained the plea of prescription of five years, notwithstanding the payments which had been made. *Macdonald & L'ériger* 26 L. C. J. 303, S. C. R. 1882.

III. PRIVILEGE FOR.

124. Where action was brought on the 10th of February, 1879, on an obligation and mortgage duly registered. *Held* that the plaintiffs had a preference for the interest from the 12 May, 1876. *Bricault & Bricault*, 11 R. L. 163. S. C. 1881.

IV. RIGHT OF CORPORATIONS TO CHARGE.

125. An agreement by which a Corporation authorized to lend money, charges a rate of interest greater than that authorized by chap. 58 of C. S. C., namely 6 per cent, is null as to the excess of interest only, and a *rente* constituted for the same purpose is subject to the same provisions. *Corporation du Séminaire de Nicolet & Pauzé*, 11 R. L. 438, S. C. 1882.

V. RIGHT OF EXECUTOR TO CHARGE.

126. Where an executor acts without authority as tutor to the minor whose estate he administers, he cannot charge interest on moneys expended in that capacity, but he has a right to claim interest on all interest bearing debts paid by him in the interest of the minor to prevent the sacrifice of her real estate. *Miller & Coleman*, 25 L. C. J. 196, Q. B. 1881,

VI. RIGHT TO.

127. Interest runs on the interest of coupons of railway debentures, from the dates on which they respectively fall due without the necessity of putting the debtor *en demeure*. *Desrosiers & The Montreal, Portland & Boston R'y Co.*, 28 L. C. J. 1, & 6 L. N. 388, S. C. R. 1883.

## INTERLOCUTORY JUDGMENTS.

I. APPEAL FROM *See* APPEAL.

(1). The creditor has a hypothec for the remainder of the arrears of interest or of rent from the date only of the registration of a claim or memorial, specifying the amount of arrears due and claimed. Nevertheless the arrears of interest due, at the time of the first registration and therein specified are preserved by such registration. 2125 C. C.

INTERIM RECEIPT *See* INSURANCE.

## INTERNATIONAL LAW.

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## INTERPRETATION.

I. OF CIVIL CODE WHERE DIFFERENCE EXISTS BETWEEN ENGLISH AND FRENCH VERSIONS *see* Remarks of Ramsay, J. *obiter* in *Harrington & Corse*. 26 L. C. J. 108. Q. B. 1882.

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## INTERVENTION.

I. BY ASSIGNEE IN INSOLVENCY.

II. DELAY TO CONTEST.

III. GROUNDS OF.

IV. MAY BE FILED DURING DELIBÉRÉ.

V. PROCEDURE IN.

VI. RIGHT OF.

I. BY ASSIGNEE IN INSOLVENCY.

128. Where an assignee in insolvency petitioned to be allowed to intervene in an action brought against the insolvent after he had assigned, the petition was dismissed on demurrer on the ground that the action did not affect the estate assigned, and moreover the assignee had not alleged that the insolvent was unwilling or unable to defend himself. *Roche & Wood*, 8 Q. L. R. 122, S. C. R., 1882.

II. DELAY TO CONTEST.

129. The corporation of the City of Quebec

having a judgment against one P. L. issued an execution against him on immoveable property duly described in the proceedings. On the 6th December, 1880, the appellant filed an opposition *afin de charge*, claiming to have certain rights over and upon the property seized. On the 21st of December the respondents filed an intervention for the purpose of contesting the opposition. On the 7th January following, respondents produced their *moyens* of contestation, concluding for the dismissal of the opposition. Appellant replied by a general and a special answer. The special answer respondents demurred to on the ground that it was not an answer to their contestation, but an answer to their intervention, and as such came too late as the intervention by the expiring of the eight days delay allowed for its contestation had been admitted and could not afterwards be contested, the opposant thereafter having only the right to join issue with the intervening parties on their *moyens* of contestation but having no further right to contest the intervention itself. *Held*, setting aside the judgment of the Superior Court, maintaining the demurrer, that the meaning of article 158 C. C. P. (1) was that after the lapse of eight days the intervenant was admitted a party to the case but the contestant was not precluded from pleading without some act of foreclosure. *Derome & Robitaille*, 8 Q. L. R. 60, Q. B., 1881.

III. GROUNDS OF.

130. Where action is brought to set aside an assessment roll, such action is in the nature of a popular action, and any other party, whose name is on such assessment roll, may intervene to represent his rights. *Molson's Bank & City of Montreal*, 11 R. L. 542, S. C. 1881.

IV. MAY BE FILED DURING DELIBÉRÉ.

131. A petition in intervention was filed after the case has been heard and taken *en délibéré* and question whether it should be allowed. *Per curiam*.—After consultation with my brother judges and seeing the precise terms of the Article of the Code as to interventions, I think there is no doubt that an intervention may be put in at any time before judgment. Intervention allowed to be filed and *délibéré* discharged. *Bæcker & Foreman*, 4 L. N. 263, S. C. 1881.

(1) If the demand in intervention is served within the delay prescribed, the parties to the suit are bound to answer it within eight days after such service, in default of which the intervention is held thence forward to be admitted by the parties who have not contested it. The intervening party is bound within eight days from the admission of his intervention to furnish any grounds he may have to set up in the principal suit. The subsequent proceedings are the same as in an ordinary suit. 158 C. C. P.

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V. PROCEDURE IN.

132. Where the proceedings on the principal demand are of a summary nature the proceedings on an intervention therein are governed by the same rules. *Stephen & Montreal, Portland & Boston Railway*, 7 L. N. 62. S. C., 1884.

VI. RIGHT OF.

133. In a case of *capias*.—*Held* that the creditor could not intervene in a suit by his debtor against a third party except on proof of fraud and collusion. *Marcotte & Moodie* 11. R. L. 460. S. C., 1882.

134. If the plaintiff in case has not the right to obtain the conclusions of his demand the person who has the right to a claim made by the plaintiff may intervene and obtain judgment against the defendant and such intervention will form a distinct action. *Marion & Dorion* 12 R. L. 380, S. C., 1883.

INTOXICATING LIQUOR.

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II. POWERS OF IN REGARD TO COMMISSIONS IN FOREIGN SUITS.

1. Action instituted in the Court of Queen's Bench, Manitoba, from which a commission issued to take evidence at Montreal. In the course of the *enquête*, objection being taken by defendants to the production of certain books called for by plaintiffs, and the commissioner having decided in favor of their production, his ruling was submitted for revision to a judge of the Superior Court. The defendants urged that there was no jurisdiction in a judge of the Court here; that the 31 Vic., Cap. 76 did not apply to the Province of Manitoba, and cited in support of this pretension, 1st 38 Vic., Cap. 3, S. 2, 2nd 34 Vic., Cap. 13, Sec. 1; that those two acts relate to the entry of Manitoba into the Dominion. Sec. 1 of the last named act, directed that the acts passed in the first, second and third sessions of the Parliament of Canada, will apply to the Province of Manitoba the same as to the other four provinces, with the exception of the special act mentioned in a schedule at the end of said act, and that Manitoba is therefore, in regard to said Cap. 76,

of 31 Vict., in the same position as the four provinces confederated by the B. N. A. Act. The defendants contended that when 31 Vic., Cap. 76 was passed, Manitoba was in effect a foreign country and was not affected by it, and that in any case, by the Imperial Act hereinafter mentioned the Court here had full jurisdiction. *Held*, maintaining the right of the Judge to act. *Crawford & Morton Dairy Farming Co.*, 6 L. N. 188, S. C., 1883.

## JUDGE OF SESSIONS.

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## JUDGMENTS.

I. ACTION TO SET ASIDE.  
II. BY DEFAULT.  
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V. ERROR IN.  
VI. FINAL.  
VII. FOREIGN.  
VIII. INTERLOUTORY.  
IX. NON OBSTANTE VEREDICTO.  
X. REVOCATION OF.

I. ACTION TO SET ASIDE.

2. A judgment rendered in the Recorder's Court of Montreal, by a person illegally exercising the functions of deputy or Assistant-Recorder is radically null, and any ratepayer threatened with execution by reason of such judgment may bring an action in the Superior Court to protect himself and have the judgment declared a nullity, without the necessity of having recourse to a writ of *certiorari*. *Molson & City of Montreal*, 26 L. C. J. 243, S. C., 1882.

II. BY DEFAULT.

Art. 91 of the said Code is amended so that in future, the judges both in the Superior and Circuit Courts, shall have the same powers as the prothonotaries and clerks respecting the rendering of judgments upon the plaintiff's affidavit, in the cases specified in the said articles Q. 47 Vic. Cap. 8, Sec. 5. Articles 89, 90, 91, 92 and 93 of the said Code, in so far as concerns the powers of prothonotaries and clerks of rendering judgment in vacation upon the plaintiff's affidavit, in the cases therein mentioned, are hereby declared never to have been affected by section 1 of the act 46 Victoria, chapter 26, nor shall they be affected by section 2 of this Act. This section shall not affect pending cases. Sec. 6. Article 92 of the Code is hereby amended by adding the words "or in term" after the words "the prothonotary in vacation." Sec. 7.

III. BY PROTHONOTARY.

3. The prothonotary has jurisdiction to

render judgment in vacation in a cause where the claim of the plaintiff is as follows \$124.24, balance dûe, réglée et reconnue pour du bois vendu et livré suivant marché produit. \$12.50 pour intérêt depuis le règlement du compte en question, que le défendeur a promis et s'est obligé de payer et \$20 pour autant que le demandeur a payé, à la demande du défendeur, pour le bois de Cull, à ceux qui avait fait le contrat. *Bruneau & McCaffry*, 11 R. L. 253 Q. B., 1881.

#### IV. CHOSE JUGÉE.

4. A judgment rendered without fraud against the principal is chose jugée against the surety. *Lamy & Drapeau* 1 Q. B. R. 237. Q. B., 1881.

5. A judgment confirming the discharge of an insolvent is chose jugée and the validity of his assignment cannot be questioned afterwards in an ordinary action against him for calls. *Ross & Angus* 6 L. N. 292, S. C., 1883.

6. Where a vendor obtained judgment against the purchaser, declaring the deed of sale of certain immovables a nullity and setting it aside.—*Held* that the judgment was not *res judicata* against a mortgagee to whom the purchaser had in the meantime mortgaged his property. *Ouellet & Rochette* 9. Q. L. R., 239. S. C. R., 1883.

7. Where a party was sued for part of the price of goods sold and delivered to him and having contested his plea was dismissed and he appealed.—*Held* that as long as the appeal was pending the decision of the first Court was chose jugée, and estopped the defendant from pleading the same issue to a suit for the balance of the price of the goods purchased by him. *Lareau & De Beaufort*, 6 L. N. 251 S. C., 1883.

#### V. ERRORS IN.

8. By an opposition, two of three horses seized were claimed by appellant. The respondent contested the opposition as to one of the animals. The judgment of the Superior Court, by error, dismissed the opposition altogether. The opposant appealed contending that the opposition should have been maintained altogether, and in any case the clerical error in the judgment should be corrected. In appeal the error was corrected and each party was condemned to pay his own costs on the appeal, the respondent not having desisted promptly from that part of the judgment which was in excess of his claim. *Prevost et Bourdon*, 4 L. N. 77 & 1 Q. B. R. 21, Q. B. 1880.

9. The respondent moved that the record be sent back to the Court below, for the purpose of having an error in the copy of judgment corrected. It appeared that the draft of judgment as prepared by the Judge who rendered judgment was correct, but in the registration a clerical error had occurred, by which a wrong number was given in the

description of certain land. The judgment as it was registered was not the judgment rendered by the Court. *Held* that the Court below had power to correct the error in the registration, but it was not necessary at that time to send back the record. *Sundberg & Wilder*, 7 L. N. 168, Q. B. 1884.

#### VI. FINAL.

10. A judgment appointing a sequestrator is a final judgment and may be appealed from *de plano*. *McCracken & Logue*, 6 L. N. 326, Q. B. 1883.

#### VII. FOREIGN DO NOT INTERRUPT PRESCRIPTION.

11. A judgment obtained in Nova Scotia (anterior to 40 Vict. Cap. 14) had not the effect of interrupting prescription of a promissory note. *Harris & Almour*, 5 L. N. 376 S. C. 1882.

#### VIII. INTERLOCUTORY.

12. A judgment or order of the Superior Court naming commissioners in expropriation is only an interlocutory order and cannot be appealed from *de plano*. *Canadian Rubber Co. & City of Montreal*, 25 L. C. J. 231, Q. B. 1880.

#### IX. NON OBSTANTE VEREDICTO.

13. A motion for judgment *non obstante*, in an insurance case, it was *held* would not lie on the ground that the evidence and the verdict showed that the policy did not cover the loss. *Rolland & Citizens' Insurance Co.*, 4 L. N. 140, S. C. R., 1881.

#### X. REVOCATION OF.

14. Judgment of non suit obtained during the absence of plaintiff's attorney when the case is called will be revoked on motion if such absence be due to *cas fortuit* but such motion must be made without delay. *Burland Lithographic Co. & Bilodeau*, 5 L. N. 432, C. C., 1882.

#### JUDICIAL OATH—See PROCEDURE.

#### JURAT.

##### I. VALIDITY OF.

15. In the jurat of an affidavit the quality of the person receiving it is sufficiently indicated by terms which enables the Court to recognize its own officers. *Montgomery & Lyster*, 8 Q. L. R. 375 S. C. R., 1882.

## JURIDICAL DAYS.

I. WHAT ARE, *see* PROCEDURE, TERMS OF COURT.

## JURISDICTION.

- I. IN ACTIONS BY SAILORS.
- II. IN MATTERS CONCERNING BRIDGES.
- III. OF CIRCUIT COURT.
- IV. OF COMMISSIONERS' COURT.
- V. OF JUDGE IN CHAMBERS.
- VI. OF JUDGE OF SESSIONS.
- VII. OF PROTHONOTARY AS TO JUDGMENT IN VACATION.
- VIII. OF RECORDER'S COURT.
- IX. OF SUPERIOR COURT.
- X. OF VICE-ADMIRALTY COURT.
- XI. OVER WRITS FROM ANOTHER DISTRICT.

## I. IN ACTION BY SAILORS.

16. To an action by a sailor for wages, defendant pleaded want of jurisdiction in the Judge of Session of the Peace to hear the case, on the ground that the vessel was not registered. The proof was to the effect that the plaintiff was a sailor on board the barque. "Leda," of which the defendant was owner and captain, and had been engaged verbally in presence of witnesses who proved also the value of the services. There was no proof however that the vessel had been registered in accordance with the provisions of 36 Vic. Cap. 129, Secs. 52 and 54 (1) but the barque had a license from the Harbor commissioners. *Held* no jurisdiction *Tremblay & Lamothe*, 7 Q. L. R. 294, S. P., 1881.

## II. IN MATTERS CONCERNING BRIDGES.

17. Le juge des Sessions de la Paix pour le district de Québec n'a pas juridiction dans une poursuite instituée en vertu du chapitre 30 des Statuts de Québec, 43-44 Vict., lorsque l'infraction mise à la charge du défendeur est alléguée avoir été commise sur le pont, entre la municipalité de Beauport et celle de l'Ange Gardien, et qu'il n'appert pas qu'il n'y a pas de juge de paix dans l'une ou l'autre de ces municipalités. *Les Syndics des chemins et barrières de la rive Nord & Parent*, 8 Q. L. R. 321, Po. Ct. 1881.

## III. OF CIRCUIT COURT.

18. Where, upon judgment in the Circuit Court, the plaintiff took a *saisie arrêt* in the hands of the *tiers-saisi* who declared that a sum of \$1150, which he had owed to defend-

(1) Every sailor or apprentice belonging to a vessel registered in one of the said Provinces may proceed by summary process for the recovery of his wages before a judge of the Sessions of the Peace.

dant, had been transferred by the latter to others and he owed him nothing, and the plaintiff contested, asking that the transfer be set aside.—*Held* that this was nothing but a revocatory action for \$1150, and the Circuit Court had no jurisdiction. *Lapointe & Bélanger*, 7 Q. L. R. 316, S. C. R. 1881.

19. But as the parties themselves had not raised the objection, no costs would be awarded. *Ib.*

20. Plaintiff obtained judgment in the Circuit Court against the defendant and issued a *saisie-arrêt* in the hands of *tiers-saisi*, who declared that he owed nothing to the defendant. Plaintiff contested this declaration and by his contestation asked that the *tiers-saisi* be condemned to pay \$20 debt, a year's interest and costs, in all amounting to \$120. The *tiers-saisi* evoked the contestation into the Superior Court, and on the evocation, it was *held* that the contestation of the declaration of the garnishee was a separate and distinct issue from that of the original suit, and when it involved an amount greater than the jurisdiction of the Circuit Court, it must be sent to the Superior Court. *Wright & Corporation of Stoneham*, 7 Q. L. R. 133, S. C. 1881.

21. On appeal to the Queen's Bench.—*Held* confirming the judgment of the Circuit Court, that under Articles 100 and 698, of the Municipal Code, the Circuit Court had jurisdiction on an appeal from the County Council concerning a by-law of the local Council when the County Council commits an irregularity. *Corporation de St. Maurice & Dufréne*, 10 Q. L. R. 227, Q. B. 1884.

## IV. OF COMMISSIONERS COURT.

22. On application for a writ of prohibition against the decision of the Commissioners' Court.—*Held* that where the Commissioners' Court in question has been established for a certain parish and part of that parish has since been erected into a village, the Commissioners' Court has no jurisdiction in the village except as provided by the Quebec Act, 41 Vic. Chap. 17. *Sirois & Guimond*, 11 R. L. 230 S. C. 1882.

23. And *held* also in a proceeding brought before the Commissioners' Court under the Art. 1188 of the Code of Procedure, Par. 3 the jurisdiction was to appear on the face of the proceedings. *Ib.*

Any procès-verbal, roll, resolution or other order of a municipal council, may be set aside by the Magistrate's Court or by the Circuit Court of the county or district, by reason of its illegality, to the same effect as a municipal by-law, and is subject to the provisions of Articles 461 & 706 (100 M. C.) Any municipal elector in his own name, may by a petition presented to the Magistrate's Court or the Circuit Court of the County or district, demand and obtain on the ground of illegality, the annulment of any Municipal by-law, with costs against the Corporation. 698 M. C.



## V. OF JUDGE IN CHAMBERS.

24. A judgment of interdiction which has been pronounced by the Prothonotary, is subject to revision by the Court only, and not by a judge in chambers. *Clement & Francis*, 5 L. N. 301, Q. B., 1881.

25. With respect to a petition to set aside a *capias*.—*Held* that when a judgment in chambers is given jurisdiction concurrently with the Court of which he is a member, that his judgments in the exercise of that jurisdiction are not subject to the control of the Court with which he has concurrent jurisdiction, but are liable only to be reversed by a higher tribunal, in the same way as if they had been rendered by the Court. (1) *Forest & Berens-tein*, 8 Q. L. R. 264. S. C. R., 1882.

## VI. OF JUDGE OF SESSIONS.

26. The prisoner contended that he was imprisoned without authority, the judge of sessions of the Peace being appointed by the Lieutenant Governor. The Court would not enter upon a question of this sort on *habeas corpus*. The judge of Sessions was in the open enjoyment of a judicial office and his quality could not be questioned by every litigant. *Brosseau Exp.* 4 L. N. 99, Q. B., 1881.

27. Petitioner was convicted before the judge of Sessions of Quebec and condemned to five years imprisonment, for being on board a vessel in the Port of Quebec, of which he was not master, agent, or consignee, or in the employ of any of those persons and without their consent, and asked for a writ of prohibition on the ground that the Statute under which he was convicted provided only, that he should be brought before a judge of Sessions to be tried according to the Provisions of the Act, but did not expressly state that he could be condemned by the judge of Sessions. *Held* dismissing the petition. *Clark & Chauveau* 11 R. L. 228. Q. B., 1882.

VII. OF PROTHONOTARY AS TO JUDGMENT IN VACATION, *see* JUDGMENTS.

## VIII. OF RECORDER'S COURT.

28. The Recorder of the city of Quebec has jurisdiction in a prosecution for keeping a house of ill fame under the Canada Act, 29-30, Vict. Ch. 57 & 23. *Filion Exp.*, 12 R. L. 142, Q. B. 1882.

29. The Recorder's Court of the City of Montreal has jurisdiction over charges of keeping houses of ill fame within the said City. *Cherrier Exp.* 5 L. N. 343, Q. B. 1882.

(1) This opinion, though in the nature of an *obiter dictum*, delivered in the course of a dissent on the main issue, seems to have been concurred in by the other judges and to be entitled to the authority of a judgment. *Ed.*

## IX. OF SUPERIOR COURT.

30. The jurisdiction of the Superior Court as to amount, is governed by the amount claimed and not by the amount found to be due. *Tourigny & Fortin*, 10 Q. L. R. 302, S. C. R. 1884.

## X. OF VICE ADMIRALTY COURT.

31. Action in the Vice Admiralty Court for damages sustained or liable to be sustained by the lessees of a wharf which was run into by the ship *Barcelona*. In a previous action by the owner of the wharf, damages were recovered for the actual injury to the wharf. *Per curiam*.—"The claim in this suit is not for damage done by the ship to property, and it is not for any damage occasioned at the time of the collision but for remote and consequential damages arising from disturbance in the enjoyment of a five years' lease. If damage could be allowed for the period now demanded, from the 11th October, to the ensuing month of July, when the *Barcelona* was arrested a second time a period of eight months, she might be kept under a lien for damages during the five years' lease. In cases of ordinary collisions and detentions the maritime law does not allow of damages of this nature. It confines the claim to actual damage sustained at the time and place of injury and does not allow profits which might probably have been realized if the act complained of had not occurred. The term "damage" in the singular used by the Imperial Statute would seem to be in accordance with the law as it now stand with reference to collision of ships, and restriction of the injury to time and place. An addition to the jurisdiction of the Vice Admiralty Court is made by the Act, and a statute creating a new jurisdiction ought to be construed strictly, and the jurisdiction of the Superior Court is not ousted, but by express words or implication. By the Art. 1660 of the Code the promoters would seem to have their remedy against their lessor, for a reduction of rent proportionate to their non-enjoyment and with the jurisdiction of the Superior Courts in this particular I cannot interfere. The defendants have not taken exception to the jurisdiction, and as a necessary consequence, they cannot recover costs without which this suit is dismissed." "*Barcelona*" *The, in re*, 8 Q. L. R. 343, V. A. C. 1882.

## XI. OVER WRITS FROM ANOTHER DISTRICT.

32. The plaintiff having obtained judgment against the defendant in the District of Quebec sent a *fi, fa* to Montreal for execution. Defendant on affidavit obtained a temporary order to the bailiff from a judge in Montreal, before anything had been done under the *fi, fa*, to suspend, until proceedings in revocation could be instituted at Quebec. *Motion*

by plaintiff to set aside order for want of jurisdiction in the judge at Montreal to issue, not allowed. *Sewell & Boutillier*, S. C., 1883.

## JURY.

I. ACTS RESPECTING, *see* Q. 44-45 VICT., CAP. 10; Q. 46 VICT., CAP. 16; Q. 47 VICT., CAP. 11; Q. 48 VICT., CAP. 17.

## II. IN CIVIL CASES.

*Fixing trial.*

*Judgment non obstante.*

*Motion for judgment.*

*New trial.*

*Option of.*

*Verdict of.*

## II. IN CIVIL CASES.

33. *Fixing trial.*—Motion by defendant to fix the trial by jury. *Per Curiam.*—Court cannot grant the motion, inasmuch as article 352 of the Code of Civil Procedure provides that no trial by jury can be fixed until the court or judge, upon the motion and suggestion of the party asking for it, has assigned the fact or facts to be enquired into by the jury and has decided all issues raised. The motion to fix the trial is therefore premature, as the defendant has omitted to ask for the settlement of the facts to be referred to the jury. *Senecal & the Mail printing Company* S. C., 1884.

34. *Judgment non obstante.*—Motion by defendants for judgment *non obstante verdicto* on the ground that the evidence and the verdict showed that the policy did not cover the loss. *Held* that though this might be ground to set aside the verdict and for a new trial, it was not a legal ground under Art 433 C. C. P. (1) for judgment *non obstante verdicto*. *Rolland & Citizens' Insurance Company*. 4 L. N. 140, S. C. R., 1881.

35. *Motion for judgment.*—The defendants after a jury trial had taken place moved at different times for a new trial, for arrest of judgment and for judgment *non obstante verdicto*. These motions failed. The plaintiff then moved for judgment on the verdict. *Held* that this motion will not, under such

circumstances, be granted as a motion of course, but the court will reject such motion where the verdict appears to be unsustained by the evidence. *Fletcher & The Fire Insurance Company of Stanstead & Sherbrooke*. 5 L. N. 55, S. C. R., 1882.

36. But held in appeal reversing this that in such case the findings of the jury must be taken as they stand, and the plaintiff's motion for judgment granted, if the findings of the jury are in his favor. *Ib.* 6 L. N. 340, Q. B., 1883.

37. *New Trial.* On a trial for libel by a newspaper the verdict having been against the plaintiff a new trial was ordered for misdirection as to matter of fact. *Montague & Gazette Printing Company*. 5 L. N. 173, S. C. 1882.

38. *Option of.*—Where the plaintiff has made option of a jury trial he cannot withdraw it without the consent of the other party. *Heyneman & Davis* 6 L. N. 184 & 27 L. C. J. 108, S. C., 1883.

39. *Verdict of.*—In an action of damages for injuries received by being struck by a locomotive the jury awarded \$5,000, which the court of Review set aside on the ground of contributory negligence. *Held* reversing this judgment that where the verdict of the jury is supported by evidence, although such evidence be in some respects contradicted by other testimony, the verdict of the jury based on their appreciation of the evidence will not usually be disturbed. *Wilson & The Grand Trunk Railway Company*. 5 L. N. 88, Q. B. 1882, and Su. Ct., 1883.

## JUSTICES OF THE PEACE.

I. DUTIES OF OUT OF SESSIONS IN RELATION TO SUMMARY CONVICTIONS AND ORDERS *See* C. 47 VIC, CAP. 43.

## II. SIGNATURE OF

40. Under the License Act of Quebec the signature of one Justice of the Peace to a summons is sufficient, and that with only the addition of J. P. *La Corporation of St. Raymond & Savary*. 7 Q. L. R. 318, S. C., 1881.

# K

## SUMMARY OF TITLES

### KNOWLEDGE.

I. WILL NOT IMPLY CONSENT WHERE THE CONSENT SHOULD BE IN WRITING.

1. The statutory requirement applicable to insurance in Mutual Insurance Companies

that the consent of the Directors to a double insurance must be signified by an endorsement on the policy, or other acknowledgement in writing, is not satisfied by a mere knowledge by the insurers of other insurances. *Dustin & Hochelaga Mutual Fire Insurance Company.* 4 L. N. 295, S. C. R., 1881.

# L

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## LABORERS.

## I. EXEMPTION OF WAGES OF FROM SEIZURE FOR ONE HALF.

Whereas it is advisable to exempt from seizure one half of the wages of labourers; therefore Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows: Hereafter wages due labourers, shall be liable to seizure only for a proportion not exceeding one half. The word "labourer" shall apply only to those who work and are paid by the day by the week or month (*operarius*). Q. 44-45, Vict. Cap. 28.

## LAND—See IMMOVEABLES.

## I. SALE OF See SALE, JUDICIAL.

## LANDLORD AND TENANT—See LESSOR &amp; LESSEE.

## LAND SURVEYORS.

## I. ACTS CONCERNING, see Q. 45 VICT., CAP. 16; &amp; Q. 46 VICT., CAP. 35.

## LARCENY.

## I. WHAT IS.

1. Prisoner appeared to answer to a charge of having, on 26th October last, stolen the sum of \$568.75, the property of P. T. A second count in the indictment was to the effect that he had received the money knowing it to have been stolen. Prisoner and P. T. were in partnership from May to August when their premises were burnt down. They therefore dissolved partnership, it being agreed that the assets should be equally divided between them. There was two Insurance policies among the assets, payment being claimed upon them on October 26th, and prisoner went to the Insurance office to settle the matter, and obtained a cheque for the amount claimed. This the prisoner took charge of instead of sharing the sum equally as had been agreed, and criminal proceedings were instituted. P. T., carpenter, deposed that he had been in partnership with prisoner from May to August, 1881. Their place of business was burned down on July 29th, and on the 17th August the partnership was dissolved, an agreement being made to share the profits equally. A policy was held by the firm against the Dominion Insurance Co., and another against the Canada Insurance Co., the two amounting to \$20,000. The Dominion Company paid them a cheque for their claim on July 26th, and they proceeded together to

the bank to get it cashed. The prisoner received bills for the amount, but when witness demanded his share, prisoner declined to comply. The witness called for the money several times, but on each occasion was refused. Counsel submitted that the Crown had no case, as the money was proved never to have been in the physical possession of T., and hence no larceny could have taken place. His honor concurred, and charged the jury in accordance. A verdict of "not guilty" was returned. *Mooney & Regina*, Q. B., 1882.

## LAW.

I. CONCERNING PROTEST OF BILLS AND NOTES.  
II. CONFLICT OF see INSURANCE.

## I. CONCERNING PROTEST OF BILLS AND NOTES.

2. The rule *locus regit actum* governs in the matter of Bills and notes. Thus where a note is made in Canada, everything concerning the modality of the note is governed by the law of Canada, and if payable in a foreign country everything concerning the payment and the security thereof, such as the protest, notices &c. will be governed by the law of the place where it is payable. *Bank of America & Copland*, 4 L. N. 154, S. C. 1881.

## LAW OFFICERS OF THE CROWN.

## I. NAME OF THE DEPARTMENT OF See Q. 46 VICT. CAP. 3.

## LAWYERS See ADVOCATES, ATTORNEYS.

## LAWYERS LETTERS.

## I. FEE FOR.

3. Where a letter has been written by a lawyer in performance of instructions from a client to a debtor of the latter requesting payment of a debt, and the debtor settles the claim, the sum of \$1.50 may be claimed by the lawyer from the debtor, as the fee for such letter, and he may sue therefore in the name of his client. *Michaels & Plimsoll*, 6 L. N. 61 & 27 L. C. J. 29 & *Lennox & Thorn*, 6 N. L. 8, C. C. 1883.

## LEASE See LESSOR AND LESSEE.

## I. EMPHYTEUTIC.

II. NOT TERMINATED BY INSOLVENCY *see* INSOLVENCY.

III. RESILIATION OF.

IV. TERMINATION OF.

V. VOLUNTARY ASSIGNMENT DOES NOT TERMINATE.

VI. WITH PROMISE OF SALE.

#### I. EMPHYTEUTIC.

4. On a petition by the *adjudicataire* to annul a sheriff's sale to him of certain lands on the ground that the defendant had given an emphyteutic lease of the property, which was not mentioned in the announcements of sale. The lease in question provided as follows: "The said C. L. (the defendant) did declare to have leased, demised, granted and to farm let and by these presents doth lease demise grant and to farm let for the space and term of fifty consecutive years which have commenced running on the 21st day of the month of September last, and which will expire on the 20th day of the month of September, 1896, unto the said J. T. and J. M. junior accepting hereof, lessees for themselves their heirs and assigns that is to say: To have and to use, enjoy and possess the said portion of beach with all the appurtenances and dependencies thereof now leased or intended so to be unto the said J. T. and J. M. junior, their heirs or assigns, for the space and term of fifty consecutive years, subject, however, to the following reserves, exceptions, clauses and conditions that is to say: 1st. That the emplacement or building lots actually leased by the said lessor to divers parties are not comprised in the present lease and shall continue to be used and employed by the lessor as heretofore; 2nd. That a piece of ground (*sequitur descriptio*) is by him hereby reserved and shall be by him used to put firewood thereon but for no other purpose whatever; 3rd. It is hereby expressly agreed by the parties that over and above the price of the present lease hereinafter stipulated, the lessor shall be entitled to have and receive from the crie or refuse wood in the said cove a sufficient quantity for heating one stove throughout every winter during the present lease. 4th It is hereby expressly agreed by and between the said parties that the lessees shall have a right to put an end to this lease on the expiration of the first twenty-five years of its duration upon giving notice in writing to the lessor or his heirs or assigns at the domicile hereinafter elected, three months before the expiration of the twenty fifth year of the term of this lease, upon the giving of which notice the present lease shall terminate on the 20th day of the month of September, 1871, in the same manner as if it had been originally made for 25 years only. And lastly, the present lease is thus made for and in consideration of the price or sum of twenty-five pounds current

money of this province *per annum*, and for each year of its duration. The lessor hereby acknowledging to have received in advance in the presence of us, the said notaries, from the said lessees the sum of £25, being for the first years rent of which the said lessees are hereby fully exonerated, released and discharged. And the said lessees do hereby promise and engage to continue paying the said rent in advance yearly on the 21st day of the month of September, next year, and the other on the like day in each successive year, and which rent shall be payable at the domicile hereinafter elected by the parties. And it is hereby specially agreed by and between the said parties that if the said lessees should neglect or refuse to pay the said rent, each year, in advance, they will thereby lose all right to continue occupying the said beach hereby leased to them, and the present lease will hereby become null and void. And for securing the payment of the said yearly rent of £25, the said lessees do hereby specially bind, pledge, mortgage and hypothecate the beach hereby leased to them and herein above designated, &c., &c. Held that this was an emphyteutic lease notwithstanding 567 C. C. (1) as before the Code the obligation of improving the property was not an essential obligation in such a lease. *Cossitt v. Lemieux*, 25 L. C. J. & 5 L. N. 10, 317 S. C. 1881.

5. If an immoveable, charged with an unexpired term of 15 years of the lease above mentioned be sold by the Sheriff without mention of such charge in the minutes of seizure, and if such charge diminishes the value of the property so much that it is to be presumed that the purchaser would not have bought had he been aware of it—the purchaser who is prevented by notification and protest on the part of the lessee from obtaining possession of the immoveable during such unexpired term, may obtain the vacation of the Sheriff's sale under art. 714 C. C. P. *Id.*

6. The principal and distinguishing characteristic of an emphyteusis before the code was the alienation of the property. *Id.*

7. Under an emphyteutic lease the lessor has not for the payment of the rent and other obligations of the lease, the privilege which he has on an ordinary lease on the moveable property found in or removed from the premises leased, and therefore a *saïsie gagerie* cannot issue under such lease. *Elliot & Eastern Townships Bank*, 2 Q. B. R. 172, Q. B. 1882.

8. By deed dated October, 1867, one L., *auteur* of plaintiffs, declared to have leased for the term of 29 years to the defendant, &c., as lessee, his heirs and assigns, a certain beach

(1) Emphyteusis or emphyteutic lease is a contract by which the proprietor of an immoveable conveys it for a time to another, the lessee subjecting himself to make improvements, to pay the lessor an annual rent and to such other charges as may be agreed upon. 567 C. C.

let within the limits of the town of Levis for an annual rent of £110, besides 20 cords wood or twenty pounds in money in lieu thereof, to be furnished annually at the same time as rent and the lessee bound himself to leave at the expiration of the lease all buildings or wharves which he might have erected on the premises. A's wife appeared in the deed and renounced dower. *Held*, that a lease made since the coming into force of the Code for more than a nominal rent, and containing no stipulation obliging the lessee to improve the property leased will not be deemed to be of an emphyteutic nature, although it be for 29 years. *Crédit Foncier Franco Canadien & Young*, 9 Q. L. R. 317, S. C., 1883.

### III. RESILIATION OF.

9. Action to rescind a lease on the ground "that for several months past, the defendant had permitted the leased premises to be, by day and night, the resort of loose, idle and disorderly persons and to be used for purposes of prostitution, to the great injury of the plaintiffs and to the scandal of all peaceable and respectable persons residing in the vicinity. Judgment ordering that the lease be rescinded and the defendant ejected. *Life Association of Scotland & Downie*, 4 L. N. 47; S. C., 1880.

### IV. TERMINATION OF.

10. The lease passed by the usufructuary of an immovable is dissolved by his death. But the lessee can still occupy the premises, as by tacit lease. *Labelle & Villeneuve*, 28 L. C. J. 254, C. C., 1872.

11. A verbal lease of a house without any agreement as to its termination can only be legally terminated by a three month's notice. *Gougeon & Yuile*, 26 L. C. J. 142, S. C. R., 1881.

12. Where a lessee brought opposition to the sale of an immovable on the ground of an authentic lease duly enregistered.—*Held*, that the lease was dissolved by the sale of the property and the *adjudicataire* was not bound to maintain it. *Desjardins & Gravel & Langevin*, 25 L. C. J. 105, S. C., 1880.

13. And where an *adjudicataire* brought summary petition for a writ of possession, and the lessee contested on the ground that he held by tacit reconduction until the 1st May following.—*Held*, that his lease was terminated by the adjudication and petition for possession granted. (1) *McLaren & Kirkwood & Brook & Blackman*, 25 L. C. J. 107, S. C., 1881.

14. The lessee had failed and the question in the case was whether the respondent

(1) In this case this important question will be found very exhaustively discussed and the authorities very fully set forth. *Ed.*

received sufficient notice to terminate the lease on the 1st May following, or whether the estate was liable for another year's rent. A meeting of creditors was held February 7th, at which a resolution of creditors was passed to notify the respondent that the premises would not be required after 30th April. *Per curiam*.—If a copy of that resolution had been notified to respondent, the notice would have been good under the Amending Act, 40 Vic., which allowed notice to be given under certain circumstances within a week from the 1st February. But the assignee never sent a copy of the resolution to the landlord; he wrote stating that he was instructed to notify him. But the respondent was entitled to have a copy of the resolution. But more than this: it appeared that there was no resolution in existence. The assignee stated that such a resolution was passed, but it was lost. Could the contents of this document be proved by verbal evidence without showing how it was lost? It would be a very dangerous practice. The judgment would be confirmed, not on the ground that the 7th February was too late to give notice, but upon the ground that no sufficient notice was given to the respondent. *Seybold & Evans*, Q. B. 1882.

### V. VOLUNTARY ASSIGNMENT DOES NOT TERMINATE.

15. Action under a lease for five years from 1st May 1878. The rent had been paid up to the 1st May 1881, before the action began, and the defendant contended that his lease terminated at the last mentioned date under an assignment which he had made as an insolvent, on the 31st December, 1880. His plea invoked this assignment and a clause of the lease in the following words: "In case of insolvency of said lessee or his making any assignment of his estate, this lease shall *ipso facto* become null and void, after the expiration of the year then current, during which such assignment is made, for the remainder of the term thereof, without notice to the assignee or to any other person or persons whatever." Plaintiffs answered the plea by alleging that the lease was made when the Insolvent Act of 1875 and its amendments were in force, and that the clause in question had only been inserted in view of an insolvency and assignment under this Act. Answer of plaintiff held to be well founded and that the clauses in question did not apply to a voluntary assignment after the repeal of the Act. *Beaudry & Bond*, 4 L. N. 227, S. C. 1881.

### VI. WITH PROMISE OF SALE.

16. The question as to the proprietorship of a piano claimed by the plaintiff from the defendant. The defendant's son and daughter intervened and claimed under title derived from defendant. The defendant held the piano under a lease from plaintiff who pro-

mised to sell him the piano conditionally upon his paying the price. *Held* confirming the judgment of the Court below maintaining the right of the plaintiff. *Fairview & Wheeler* 4 L. N. 237, S. C. R. 1881.

## LEGACIES See WILLS

- I. ACCESSION TO.
- II. ACTION FOR.
- III. LIABILITY OF LEGATEES.
- IV. REVOCATION OF.

### I. ACCESSION TO.

17. Where a legacy of an immoveable was made to husband and wife together by an ascendant of the wife, and the wife died shortly after the testator.—*Held* on action of an uncle of defendant, the husband, that the wife's share belonged to her husband by accession. *Dubois & Boucher*, 9 Q. L. R. 1 S. C. 1883.

### II. ACTION FOR.

18. Action was brought by the plaintiff as legatee against the defendants, as heirs of the late B. S., who made a disposition by her will, of the residue of her estate after leaving certain special legacies including the one sued for. The action also asked for separation *de patrimoine*, and that B. S. be declared to have been owner *par indivis* of certain immoveable property, the Trafalgar Institute being *mis en cause*, as the other undivided owner to the extent of one third under the will of A. S., sister of the testatrix. The executors named by the will were also *mis en cause*. *Held* that the action was rightly brought against the heirs even where there were testamentary executors. *Royal Institution for the advancement of learning & Scott*, 26 S. C. J. 247, S. C., 1882.

### III. LIABILITY OF LEGATEES.

19. Action by the transferee of a hypothec granted to one J. P., deceased, on an immoveable property in the City of Montreal, against the executors of the estate of the mortgagor, also deceased. The mortgagor, by will, bequeathed the property hypothecated to the appellants as legatees by particular title, and the executors being sued on the mortgage were protested by the heirs not to pay the mortgage out of the general estate, notwithstanding a clause in the will by which they, the executors, were directed by the testator to first pay all his just debts, &c. The executors thereupon called in the particular legatees *en garantie*. Issue that the legatees took their legacy subject to the incumbrance upon it, and that they, and not the general estate, were liable for the hypothec in question. *Held* that under Arts. 741, 876, 889

C. C. (1) the particular legatees were liable. *Harrington & Corse* 26 L. C. J. 79, Q. B., 1882.

20. But reversed in Supreme Court, a majority of the court holding that the universal legatee was liable where the burden was not expressly thrown on the particular legatee by the terms of the will. *Ib* 9 S. C. Rep. 412, Su. Ct., 1883.

21. And in another case, *Held*—Que le légataire particulier, en l'absence de demande de réduction par les créanciers du testateur, n'est ni tenu, ni obligé au paiement des dettes de celui-ci, pas même de celles dues par hypothèques sur les immeubles à lui légués, et que le légataire universel est seul tenu et obligé au paiement des dites dettes. *Pennison & Pennison*, 9 Q. L. R. 122, Q. B. 1883.

22. Et que le légataire particulier qui paye l'hypothèque grevant l'immeuble qui lui a été légué, est subrogé de plein droit aux droits du créancier qu'il a payé. *Ib*.

### IV. REVOCATION OF.

23. Action by the plaintiff as a special legatee under the will of the late A. F., against the defendant, as curator to the estate of the testator and praying for an account. The testator's property at the time of his death consisted of three seignories, Rivière du Loup, Madawaska et Témiscouata. He had eight children, the first two by an Indian woman, (whom the defendants pretended were illegitimate, and the other six, by a white woman, whom he had never married. The bulk of the property of the will was bequeathed to the sons, of whom there were four, and special legacies to the daughters. Subsequently to the making of the will, the testator received an offer of £15,000 for the two woodland seignories, which he had supposed to be worth only £1,500 or £2000, and being in debt to a large amount and much in need of money he sold. With the money he paid off a considerable portion of his indebtedness and the balance he invested in mortgages on real estate, at interest for the benefit of his children. On behalf of the defendants it was contended that this sale had the effect of revoking the will. *Held* that under the old law previous to the Code (2) the sale under the circumstances in

(1) A particular legatee who pays a hypothecary debt for which he is not liable, in order to free the immoveable bequeathed to him, has his recourse against those who take the succession, each for his share, with subrogation in the same manner as any other person acquiring under a particular title. 741 C. C.

(2) Every alienation by the testator of the right of ownership in the thing bequeathed, even in a case of necessity or by forced means or with right of redemption reserved, or by exchange, carries with it, unless he has otherwise provided, a revocation of the will or legacy, for all that has been thus disposed of, even though if it were voluntary the alienation be void. 897 C. C.

which it was made had not the effect of defeating the legacy of the seignories to the plaintiff and his co-legatees, and that they had a right to claim the £9,600 mentioned in the declaration as the proceeds of the sale and as representing the said seignories. *Fraser & Pouliot*. 7, Q. L. R., 148, S. C., 1881.

### LEGATEES—See EXECUTORS.

#### I. LIABILITY OF.

24. A universal donee or legatee in usufruct, who has intermeddled with the property of an estate and succession, who has been sued as such, jointly with the testamentary executors of such estate, and against whom judgment was rendered in such capacity, becomes personally responsible for the debts of the estate and cannot, under the law as it existed before the Code, liberate himself by offering to render an account. *Hudon & Painchaud*, 6 L. N. 109, S. C., 1883.

### LEGISLATIVE ASSEMBLY.

I. DURATION OF EXTENDED, *see* Q. 44-45 VIC., CAP. 7.

### LEGISLATIVE AUTHORITY.

#### I. DIVISION OF BETWEEN THE LOCAL AND FEDERAL LEGISLATURES.

*In commercial matters.*

*In corporation matters.*

*In criminal matters.*

*In matters of Licenses.*

*In matters of Procedure.*

*In matters of Taxation.*

*In matters of Temperance.*

*In matters of Toll Bridges.*

*In matters of Trade.*

#### II. LIMITS OF.

#### III. PROCEEDINGS AFFECTING TO BE NOTIFIED TO THE ATTORNEY GENERAL.

#### I. DIVISION OF BETWEEN LOCAL AND FEDERAL LEGISLATURES.

25. *In commercial matters.*—Injunction against respondents to prohibit them from prosecuting petitioner and also praying that the Act of the Quebec Legislature, known as the Quebec Pharmacy Act of 1875 (34 Vict. Cap. 52.) be declared unconstitutional and *ultra vires*. The petitioner holding a license from the Ontario College of Pharmacy had been carrying a business for about a year as chemist and druggist in the City of Montreal, and had been prosecuted in the Police Court under the Act in question, for so doing. He contended that the Act was *ultra vires* of the local legislature being an interference with

trade and commerce, a matter which fell exclusively within the jurisdiction of the Parliament of Canada. Plea that pharmacy is a branch of the medical profession and that the Pharmacy Act does not touch what may be called acts of trading but merely prohibits certain things which are recognized as being the legitimate business of a pharmacist and debars certain persons, in the interests of society, from practising or holding themselves out as pharmacists. *Per curiam*.—Where power is entrusted to Parliament or to a local legislature for a certain purpose, and the exercise of that power by one legislature for the purpose contemplated by law, trenches incidentally upon the powers assigned to the other legislature, the incident is included in the general power. Thus, in the case of *Cushing & Dupuy*, (1) the Privy Council said:—"It is to be presumed, indeed it is a necessary implication, that the Imperial Statute in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency intended to confer on it legislative power to interfere with property civil rights and procedure within the provinces, so far as a general law relating to those subjects might affect them." Here the Pharmacy Act touched the question of trade and commerce no further than was incidental and necessary to the exercise of general provincial powers, and the Act was therefore not *ultra vires*. *Bennett & The Pharmaceutical Association of the Province of Quebec*, 4 L. N. 125, & 1 Q. B. R. 336, Q. B. 1881.

26. On the question as to the right of the local legislature to legislate in matters of insurance, the Privy Council said.—Without attempting to define the limits of the authority of the Dominion Parliament in this direction it is enough for the decision of the present case to say that its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade such as the business of Fire Insurance in a single Province &c. *Parson & Sundry Insurance Companies*, 5 L. N. 25, P. C. 1881.

27. On the 3rd of April 1877, an amendment was passed to a by-law made in 1871, regulating that a licence fee of \$200 should be paid by any one authorized to retail liquors, before the certificate of the corporation to enable the party to obtain a licence was granted. This was done under authority of an Act of the Local Legislature, 38 Vic. Cap. 76, giving to the Council power to make by-laws—"For determining under what restrictions and conditions and in what manner the Collectors of Inland Revenue for the district of Three-Rivers shall grant licenses to merchants, traders, shopkeepers, tavernkeepers and other persons to sell such liquors."—



*Held* that under a proper interpretation of sub section 8, the right to pass a prohibitory law for the purposes of municipal institutions has been reserved to the local legislatures by the B.N.A. Act. *Corporation of Three Rivers & Sullie*, 5 L. N. 330, Q. B. 1882.

28. On a writ of prohibition from a conviction of the Recorder of Quebec, for keeping a tavern open on Sunday, in contravention of the License Act of Quebec.—*Held*, in appeal, confirming the judgment of the Superior Court, that although the Parliament of Canada, under power given to it, to regulate trade and commerce alone has the power to prohibit the trade in intoxicating liquors; yet the Provincial Legislatures, under the power given to them, may for the preservation of good order, in the municipalities which they are empowered to establish, and which are under their control, make reasonable police regulations, although such regulations may, to some extent interfere with the sale of spirituous liquors. *Poulin & Corporation of Quebec*, 2 Q. B. R. 103, 7 Q. L. R. 337, Q. B. 1881, and 28 L. C. J. 105, Su. Ct. 1884.

29. *In corporation matters*.—Case of *Dobie & Board of Temporalities* (II Dig. 448-41), reported at length, 26 L. C. J. 170, P. C. 1882.

30. The defendant, agent of the Bell Telephone Co. of Canada, was indicted for illegally erecting three telegraph poles in Buade St., a leading thoroughfare in the city of Quebec, thereby obstructing the Queen's highway, to the common nuisance of the public. The Company was incorporated by Act of the Parliament of Canada, 43 Vic. Cap. 67, with power to establish telephone lines in the several provinces in the Dominion, and to construct, erect and maintain lines along any public highway, street, bridge, water course or any other such place or across or under any navigable waters, either wholly in Canada or dividing Canada from any other country, "provided that in cities, towns and incorporated villages, the opening up of the street for the erection of poles or for carrying the wires underground shall be done under the direction and supervision of the engineer or such other officer as the Council may appoint, and in such manner as the Council may direct and that the surface of the street shall in all cases be restored to its former condition, by and at the expenses of the Company." This charter and the consent of the City Council duly obtained were relied on by the defendant as a plea to the indictment; in the absence of these conditions the poles in question would undoubtedly constitute an obstruction and a nuisance. The proof was that the business of the Company, in connection with the objectionable poles, was of a purely local character and confined to the district of Quebec, and it was not declared by the charter to be an undertaking incorporated for the general advantage of Canada. The jury, by the direction of the Court, found a verdict of guilty subject to the question reserved for the determination of the

Court *in banco*, whether the said Company had authority under their statute, or were otherwise authorized by law to place the said poles in the said street, and if so whether the Dominion Legislature had a legal right to grant such authority.—*Held*, sustaining the verdict, that the establishment of the Company in Quebec was one purely of a local character, and intending to serve local purposes, having no pretention to connect provinces or even to cross navigable rivers, and of such a nature as to be *ultra vires* of the Dominion Parliament, and falling exclusively within the jurisdiction of the Local Legislature and that to give the Dominion Parliament power to authorize the Bell Telephone Co. to impede circulation and traffic in the streets of Quebec, one of two conditions would have been required: either the Company should have been incorporated for the purpose of connecting by telephone lines this province with any other or others of the provinces of the Dominion, or of extending its lines beyond the limits of this province: or it should have been declared by Parliament to be for the general advantage of Canada, or of two or more of the provinces. *Regina & Moher*, 7 Q. L. R. 183, & 5 L. N. 43, & 1 Q. B. R. 384, Q. B. 1881.

31. By the Act 27 Vic. Cap. 103, the Dominion Parliament granted a charter to the appellants, a law and investment association, empowering them among other things to buy, lease, mortgage or sell landed property and buildings, to lend money on security by mortgage on real estate, or on Dominion or Provincial government securities &c. The Act also provided that the chief office of the association should be in the city of Montreal, and that branch offices, or agencies might be established in London, England, in New York, or in any city or town in the Dominion for such purposes as the Directors might determine in accordance with the act. The secretary of the association, called in support of the petition, proved that the association had bought lands, erected houses on such lands and sold them, and had also built houses on the lands of others and lent money on real estate. He stated that these operations had hitherto been confined to the Province of Quebec though efforts had been made to extend the business of the company to other provinces and to establish agencies in Glasgow and New York, which efforts had failed in consequence of the inability of the association to raise sufficient capital. *Held*, reversing the judgment in appeal (5 L. N. 116) that the Act incorporating appellants was not *ultra vires* of the parliament of Canada, and the fact that the Company had not hitherto extended its operations to the full limits of its corporate authority was no reason for declaring its Act of incorporation illegal if the Act was originally within the legislative power of the Dominion Parliament. *Colonial Building & Investment Association & Atty. Gen.* 7 L. N. 10 & 27 L. C. J. 295, P. C. 1883.

32. And although by the law of Quebec,

corporations cannot acquire or hold land without the consent of the Crown, and the power to repeal or modify belongs exclusively to the provincial legislatures, yet the powers found in the Act of incorporation are not necessarily inconsistent with the provincial law of mortmain, which does not absolutely prohibit corporations from acquiring or holding lands but only requires, as a condition of their so doing, that they should have the consent of the Crown. *Ib.*

33. And the question whether the Company had in fact violated the law of the province by acquiring and holding land without having obtained the consent of the Crown was not in issue in this case. *Ib.*

34. Action for the recovery of a mortgage debt of \$1,000 and \$120 interest. The respondents stated under the authority of a statute of the Legislature of the Province of Quebec, which purported to authorize the formation of the Board, respondent, in a different manner from that settled by the original Act of incorporation. The object of this amendment was to enable a new body, to be called "The Presbyterian Church in Canada," being a union of certain Presbyterian Churches, under certain conditions, to take possession of the property formerly belonging to a body known as the Presbyterian Church of Canada in connection with the Church of Scotland. The appellant pleaded that the plaintiff, respondent, was not the party to whom he was indebted, that the Act of the Province of Quebec in question, 38 Vic., c. 64, was beyond the powers of a local Legislature, and that, therefore, the Board respondent was not organized by law and could not recover. *Held*, that the Dominion Parliament had power to enact a statute confirming and ratifying all acts and doings of the Board of Temporalities, since the passing of the 38th Vic., Cap. 64, although the Privy Council had by their judgment in *Dobie & Temporalities* declared the board to be illegally constituted. *Minister & Trustees, &c. & Board for the Management, &c.*, 6 L. N. 27, Q. B., 1883.

35. *In criminal matters.*—The license Act of Quebec in so far as it imposes a penalty of imprisonment with hard labor is unconstitutional and *ultra vires* of the Quebec Legislature. *Collopy v. The Corporation of the City of Quebec*, 7 Q. L. R. 19, S. C., 1880.

36. Respondent was convicted of selling liquor without license and condemned to a fine of \$75, or be imprisoned, &c. On a writ of prohibition, the conviction was annulled by the Superior Court because under S.S. 15, Sec. 92 of the B. N. A. Act, the respondent could not be condemned at the same time to fine and imprisonment, and that the provision of the Quebec Statute 41 Vic., Cap. 3, Sec. 222, under which the proceeding was brought was *ultra vires*. *Held*, reversing this judgment that the condemnation was not cumulative, but simply to be imprisoned in default of payment of the fine, and there was therefore

no excess of jurisdiction either on the part of the legislature or on the part of the magistrate. *Cold & Paradis*, 1 Q. B. R. 374, Q. B., 1881.

37. Petitioners were occupants of a factory of cut nails, and it was complained that the chimney sent forth smoke in such quantity as to be a nuisance hurtful to public health and safety, and that they refused to remove and abate the nuisance contrary to the by-law of the City of Montreal. Defendants pleaded that the City had no jurisdiction to enact the by-law and did not enact it in virtue of any competent legislative authority. The defendants were convicted. *Held*, that the power of the Dominion Parliament to enact a general law of nuisance as incident to its right to legislate as to public wrongs is not incompatible with a right in the Provincial Legislatures to authorize a municipal corporation to pass a by-law against nuisances hurtful to public health as incidental to municipal institutions. *Pillow & City of Montreal*, 6 L. N. 209 & 27 L. C. J. 216, S. C., 1883 & 8 L. N. 354, Q. B. 1885.

38. *In matters of Licenses.*—Action for the recovery of money alleged to have been illegally exacted by the defendants from the plaintiff. The declaration set up that in the year 1876, the defendants instituted two prosecutions in the Recorder's Court, in this City, under the 38 Vic., Cap. 74, Sec. 4, against the plaintiff, charging him with having kept open on Sunday a house in the City of Quebec, in which the plaintiff was then in the habit of selling spirituous liquors, and that in each of those cases the defendant was condemned to pay a penalty of \$10 and \$1.45 costs, which penalties and costs were in consequence paid by the plaintiff. That in the year 1877, the defendants instituted another prosecution in the same Court and under the same statute against the plaintiff, charging him with having kept open an *auberge*, a public house, in which he was then in the habit of selling spirituous liquors between 11 o'clock in the night of the 20th October, 1877, and 5 o'clock of the following day, and that in the year 1878, the defendants caused another prosecution to be instituted against him for a like offence. That under the first of the last mentioned prosecutions the plaintiff was condemned to pay a penalty of \$15 and one dollar and fifty-five cents costs; and in default of paying the said sums, the plaintiff was condemned to be imprisoned in the common gaol of the District of Quebec, there to be kept at hard labor for the term and space of three months, unless the said fine and costs were sooner paid; and that under the second of the last mentioned prosecutions, the plaintiff was condemned to pay a penalty of \$50 and 65 cents, under pain of imprisonment with hard labor, as in the other cases. The declaration further set up that in order to avoid imprisonment with hard labor with which he was threatened in all the cases, the plaintiff paid all the penalties and costs which he had been condemned to

pay, that all the said payments were made through error on his part without any lawful cause or consideration, he being under the erroneous belief, that the said prosecutions had been legally instituted, and that the said statute had force of law. That on the contrary, the said prosecutions were wholly unlawful, and that the statute under which they were instituted was unconstitutional and *ultra vires* of the Legislature of the Province of Quebec. On this issue was joined. *Held*, following *Collopy v. Corporation of Quebec*, that while the condemnation to imprisonment at hard labor might be unjustifiable, the provisions of the law as to the closing of taverns on Sunday and during the night were mere police regulations, and therefore within the power of the Provincial Legislatures. *Blouin v. Corporation of Quebec*, 7 Q. L. R. 18, S. C., 1880.

39. And as plaintiff had not suffered imprisonment with hard labor, but merely paid a fine legally imposed, he had no cause of action. *Ib.*

40. The Legislature of the Province of Quebec is duly vested under the B. N. A. Act with power to enact the provisions contained in the 2nd and 71st sections of the Quebec License Law of 1878. *Dion & Chauveau*, 9 Q. L. R. 220, S. C., 1883.

41. The powers conferred by the Liquor License Act of 1877 (Ontario), are correctly interpreted to make regulations, in the nature of police or municipal regulations of a merely local character for the good government of Taverns, &c., licensed for the sale of liquors by retail, and such as are calculated to preserve in the municipality, peace and public decency, and repress drunkenness and disorderly conduct. As such they do not interfere with the general regulation of trade and commerce, which belongs to the Dominion Parliament and do not conflict with the Canada Temperance Act. *Hodge & The Queen*, 28 L. C. J. 54, P. C., 1883.

42. The Legislature of Ontario, in committing certain regulations to License Commissioners, retains its powers intact, and can whenever it pleases, destroy the agency it has enacted and set up another, or take the matter directly into its own hands. *Ib.*

43. "The imposition of punishment by imprisonment for enforcing any law," in the B. N. A. Act, includes the power to impose its usual accompaniment "hard labor," and the Provincial Legislatures having the authority to impose punishment with or without hard labor, has also power to delegate similar authority to the municipal body created by it, called the License Commissioners. *Ib.*

44. *In matters of Procedure*.—On a contestation of a *saisie gagerie* for rent due by an insolvent estate which was in the hands of an assignee under the Insolvent Act of 1875.—*Held* that the Parliament of Canada had the right to change the ordinary procedure in matters such as insolvency, falling within the powers exclusively assigned to it under the

B. N. A. Act. *Beausoleil & Frigon*, 1 Q. B. R. 70, Q. B. 1880.

45. *In matters of taxation*.—The Legislature of the Province of Quebec passed the Act 43 and 44 Vic. Cap. 9, by the 9th section of which it is enacted as follows "there shall be imposed, levied and collected a duty of ten cents on every writ of summons issued out of any County Circuit Court, Magistrates Court or Commissioners' Court in the Province and a duty of ten cents shall be imposed, levied and collected on each pro-missary note, receipt, bill of particulars and exhibit whatsoever produced and filed before the Superior Court, the Circuit Court or the Magistrate's Court, such duties payable in stamps." The respondent wishing to test the legality of this tax obtained a *rule nisi* for contempt against the prothonotaries of the Superior Court for the district of Montreal for refusing to receive and file an exhibit unaccompanied by stamps as required by the above statute. After the return of the rule the Attorney General for the Province intervened in support of the tax and contested the rule. The Court below *held* the tax to be unconstitutional and declared the rule absolute against the prothonotaries. The Attorney General appealed. The principal question submitted was whether or not, such a duty came under the head of indirect taxation, and as such was not within the powers of the Local Legislature under Sec. 91, S. S. 3 and Sec. 92, S. S. 2, of the British North America Act. *Held* that notwithstanding the ruling in *Angers & The Queen Insurance Co.* in the P. C. and without deciding whether such tax was or was not an indirect tax under the sections referred to, that the duty was in consideration of a service to be rendered by an officer to the government of the Province of Quebec, and for a merely local object in the Province, to wit, for the administration of justice, and was moreover of a nature similar to those collected prior to confederation for the purpose of maintaining the administration of justice which has always been treated as local assets, and was consequently within the powers of the local Legislature. *Attorney General & Reed*, 26 L. C. J. 331, Q. B. 1882.

46. But *Held* in Supreme Court and Privy Council that the tax in question was *ultra vires* as being an indirect tax, and to form part of the consolidated revenue fund of the Province. *Ib.* 8 S. C. Rep. 408, Su. Ct. and 8 L. N. 50, P. C. 1885.

47. By the Act of Quebec 45 Vic. Cap. 22, "to provide for the exigencies of the public service of the Province of Quebec, a tax was imposed on every bank, assurance company and other commercial corporations doing business in the Province. The tax was imposed in proportion to the paid up capital of the banks, together with a tax on each office, &c. Some of the corporations interested had their offices out of the Province and some were incorporated in England or in the United

States. In some cases the stock was held chiefly by persons not resident in the Province of Quebec. *Held* confirming the judgment of the Superior Court (M. L. R. 1 S. C. 32). That the taxes imposed on corporations by the Act in question are personal and direct taxes within the Province and such as are authorized by Sec. 92, S. S. 2 of the B. N. A. Act 1867, and that a corporation doing business in the Province is subject to taxation under Sect. 92 S. S. 2, though all the shareholders are domiciled out of the province. (1) *Lamb & Sundry Banks, &c.* M. L. R. 1 Q. B. 122, 1885.

48 But even assuming that the taxes in question should be considered as not falling within the denunciation of direct taxes the local legislature had power to impose the same inasmuch as they were matters of a merely local or private nature in the Province within the meaning of the B. N. A. Act. Sec. 92. *Ib.*

49. *In matters of Temperance.*—The Canada Temperance Act of 1878, which has the effect wherever it is put in force in the Dominion to prohibit the sale of intoxicating liquors, except in certain wholesale quantities and for certain specific purposes, renders the sale of intoxicating liquors, in violation of such prohibition and regulation, a criminal offence and punishable for the third or any subsequent offence by imprisonment and is therefore within the authority and jurisdiction of the Parliament of Canada. *Russell & Regina*, 12 R. L. 664. P. C. 1882.

50. And the object of such act being to promote Temperance by means of a uniform law throughout the Dominion, it has relation to the peace, order and good government of Canada, and not to the classes of subjects relating to property and civil rights. *Ib.*

51. And the provisions for the special applications of the Act to particular places does not take away from it its character of general legislation. *Ib.*

52. Petition against a district magistrate and complainant asking that they be restrained from proceeding with a prosecution brought before the District Magistrate against said petitioner for having on the 18th September, 1882, sold intoxicating liquors in quantity less than five gallons, contrary to the Temperance Act of 1864, 21 and 28 Vict. Cap. 18. *Held* that the Quebec License Act 34 Vic. Cap. 2, and the municipal Code are *ultra vires* of the Quebec Legislature, in so far as they pretend to repeal the procedure the procedure, clauses or any part of the Temperance Act 1864, and that the incorporation of a village as a Town Corporation, under a special charter, does not relieve the territory comprised within its limits from the operation of said Temperance Act, which had been brought into force by a bye-law of the County Municipality of which the village had formed a part. *Griffiths & Rioux*, 6 L. N. 211, S. C. 1883.

53. But the Provincial Statute 42-43 Vic.

Cap. 4, ordering that places in which spirituous liquors are sold shall be closed on Sunday is a police regulation and is not in excess of the powers of the local legislature. *Poulin & Corporation of Quebec*, 6 L. N. 214, Su. Ct. 1883.

54. Although the local legislature has no authority to prohibit the sale of intoxicating liquors, it has power to make laws regulating the traffic therein, and to raise a revenue for provincial purposes by restricting, to license holders, the right to sell liquor. *Edson & Corporation of Hatley*, 7 L. N. 68 and 27 L. C. J. 312, S. C. 1883.

55. *In matters of toll bridges.*—Action for toll of a bridge. The bridge had been granted to the municipalities of Melbourne and Cleveland, but subsequently requiring repairs, the grant was revoked by the provincial executive, and a grant made to the appellants who undertook to make the necessary repairs. By the Act of Quebec, 32 Vic. Cap. 15, it is provided that "the Commissioner of Public Works may make, or cause to be made, a report of the state of any toll bridge" and that he may on any such report order "the bridge to be repaired within a certain time, and if it be not so repaired then the proprietor of the bridge shall forfeit the right of exacting toll for passage on the bridge, and all other privileges conferred upon him by the Act respecting such bridge, and that from the day of the publication of such proclamation, the bridge mentioned therein shall become the property of the Province and the Lieutenant Governor in Council may transfer the property therein and the control thereof, either to the municipality in which the same is situate, or to any other neighboring municipality together with all the rights and privileges which the former proprietor thereof enjoyed, upon such transferee becoming bound to perform upon such bridge the work ordered by the commissioner, and to keep the same for the future in good repair." *Held* that such Act only affected property and civil rights in the Province of Quebec, and as such was quite within the powers of the Quebec Legislature. *The Municipality of Cleveland & The Municipality of Melbourne & Brompton Gore*, 4 L. N. 277 & 1 Q. B. R. 353, Q. B. 1881.

56. *In matters of trade.*—On the trial of a prosecution for selling liquors without license in contravention of the Quebec License Act of 1878.—*Held* that the license Act in question was in restraint of trade and was therefore beyond the powers of the Quebec Legislature. *De St. Aubin & Lafrance*. 8 Q. L. R., 190, S. C., 1882.

## II. LIMITS OF.

57. By Sec. 190, of the Act of the Legislature of Quebec, 32 Vic. Cap. 15, it is provided that the commissioner of public works may make, or cause to be made, a report of the state of any toll bridge and he may on any such

(1) Carried to P. C. and not yet decided.

report order the bridge to be repaired within a certain time and if it be not so repaired then the proprietor of the bridge shall forfeit the right of exacting tolls for passage on the bridge, and all other privileges conferred upon him by the Act respecting such bridge. It is also by the same section provided that from the day of the publication of such proclamation the bridge mentioned therein shall become the property of the province and the Lieutenant Governor in Council may transfer the property therein, and the control thereof either to the municipality in which the same is situate or to any other neighboring municipality together with all the rights and privileges which the former proprietor thereof enjoyed and upon such transferee becoming bound to perform upon such bridge the work ordered by the commissioner and to keep the same for the future in good repair. The bridge in question was conveyed to the respondents by order in council of 21st November, 1857. In 1878, the Commissioner of Public Works of the Province of Quebec ordered the bridge to be closed and the construction of a new one to be commenced, which the respondents neglected to do, and by an order in Council of December, 1878, the proprietors were declared to have forfeited all privileges connected therewith. The right to build a new bridge and to collect all tolls and exercise all privileges connected therewith was subsequently, by order in council, under above Act, granted to appellants. The respondents urged that the Act only applied to toll bridges forming part of the public works of the Province, and that the legislature could not deprive a person of his property without process of law. *Held*, reversing the judgment of the first court, that the Act applied to the property in question, and though the policy of it might be very questionable the legislature was the proper judge of the morality of its legislation and the Courts, where the intention is clearly expressed, are bound to give effect to it. *Municipality of the township of Cleveland & Municipality of Melbourne & Brompton*. 26 L. C. J. 1. Q. B., 1881.

58. There is no practical limit to the authority of a Supreme Legislature except the lack of executive power to enforce its enactments. *Dobie & Board of management &c.* 26. L. C. J. 170. P. C., 1882.

### III. PROCEEDINGS AFFECTING TO BE NOTIFIED TO THE ATTORNEY-GENERAL.

Whereas, since Confederation, there have arisen and still arise daily before the Courts, in suits between private individuals, between Corporations, or between Corporations and private individuals, questions of Legislative conflict between the Federal Parliament and Provincial Legislatures, and more especially of this province, without there being any legal means of permitting the government to intervene and defend the Legislative prerogatives and rights of the Province, thus constituting an omission which is preju-

dicial to the public interest : Therefore her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. No question as to the Constitutionality of any act of the Province or of the Federal Parliament, shall be raised before the Courts of original jurisdiction or of Appeal unless the party raising the same show to the Court, that he has, at least eight days before the day fixed for the hearing, given notice to the Attorney-General of the question which he intends to raise ; with sufficient information to enable him to understand the nature of his pretensions ; upon such notice the Attorney-General may intervene in the case, on behalf of the Crown, and take issue in writing on such questions, and the judgment of the Court, whether it grant or refuse his conclusions, shall mention such intervention and such conclusions on which it shall render judgment, as if the Attorney-General were a party to the suit, and a copy of such judgment shall be forwarded without delay to the Attorney-General.

2. This act shall come into force on the day of its sanction, Q. 45 Vic. Cap. 4.

## LEGISLATURE.

I. INDEPENDANCE OF, *see* Q. 47 VICT., CAP. 2, & Q. 48 VICT., CAP. 3.

### II. POWERS OF.

59. In a license case.—*Held* that the fact that a prohibitory by-law existed in virtue of the Municipal Code does not affect the right of the legislature of the Province of Quebec to impose a fine greater than that imposed by the by-law. *Côté & Paradis*, 1 Q. B. R. 374, Q. B. 1881.

## LEGITIME CONTRADICTEUR — *See* HYPOTHEC, DELAISSEMENT.

## LESION.

I. A CAUSE OF NULLITY, *see* CONTRACTS, MINORITY, &c.

## LESSOR AND LESSEE.

I. ACTION AGAINST LESSEE.

II. ACTION IN EJECTMENT.

III. ACTION ON A LEASE.

IV. ACTION TO ANNUL LEASE OF MOVEABLES.

V. LEASE OF BUTCHERS' STALLS IN MARKET.

VI. LIABILITY OF LESSOR.

VII. LIABILITY OF LESSOR.

VIII. NOTICE TO QUIT.

IX. PRESCRIPTION OF RENT AND TAXES.

X. RENT PAID IN ADVANCE.

XI. RESCISSION OF LEASE ON GROUND OF IMMORAL USE OF PREMISES, *see* LEASE.

XII. RIGHTS OF LESSEE.

## XIII. RIGHTS OF LESSOR.

*Where Lessee insolvent.*

## XIV. RIGHTS OF SUB LESSEE.

## XV. SUB LESSEE.

## XVI. TRANSFER LEASE.

## XVII. WAIVER OF EXEMPTION FROM SEIZURE.

## I. ACTION AGAINST LESSEE.

60. The plaintiff's wife, separate as to property, sued the defendant to recover possession of an immoveable property belonging to her and of which she alleged the defendant had taken possession. The defendant pleaded by preliminary exception that she occupied the property in virtue of a lease from plaintiff's husband for five years. Demurrer to this plea that defendant should have called his lessor into the case *en garantie*. *Held* following *Lawlor & Cauchon (1) & Lesage & Prudhomme*, that it was sufficient for the defendant to point out his lessor in a preliminary plea as he had done. *Demers & Sams n. 8 Q. L. R. 345. S. C., 1882.*

## II. ACTION IN EJECTMENT.

61. Appellant leased a house from respondent who brought an action in ejectment and claiming rent, water rate, and damages for broken glass. The lease ran from 1st May, 1879, to 1st May, 1880, and the action was instituted on the 1st day of May, 1880. During the proceedings and subsequent to the 1st May, respondent instituted an incidental demand for damages suffered by her owing to appellant's detention of the property after the expiration of the lease, and adding a special conclusion for damages but without revending the demand for ejectment. The principal demand was dismissed in the Superior Court, because the rent was not due when the action was brought, because the taxes were not due to the plaintiff but the corporation, and because the breaking of the glass was attributable, according to the evidence, to the working of the house and not to the fault of the appellant; but the incidental demand was granted on the ground that the appellant had completed what was otherwise an imperfect issue by his allegation that he had a right to remain in possession of the premises after the 1st May. The defendant appealed on the ground that the incidental demand had no connection with the principal demand, and therefore that the principal demand being rejected, there were no conclusions to justify a judgment in ejectment. *Held*, dismissing the appeal that the action on the 1st May was premature, but the incidental demand was sufficiently connected with the principal demand to carry a judgment in ejectment. *Donaldson & Charles. 4 L. N. 35 & 1. Q. B. R. 22 & 27 L. C. J., 187, Q. B., 1880.*

62. The declaration alleged that the defendants were jointly indebted to the plaintiff in the sum of \$18, being the value of the use and occupation by them during six months of certain described premises, belonging to the plaintiff under a certain deed of sale (with right of redemption), executed in favor of the plaintiff, by one J. L. The conclusions of the declaration asked that the defendants be condemned to vacate the premises and deliver them over to the plaintiff, or in default, that the defendants be ejected; that the said lease, *la dite location*, be put and end to, and that the defendants be jointly condemned to pay the \$18 with interest and costs. *Held*, that an action in ejectment will not lie, under the law relating to lessors and lessees, unless the defendant has occupied under a lease from or by sufferance of the plaintiff. *Parent & Oisel, 9 Q. L. R. 135, S. C., 1883.*

63. And that by the term "sufferance," in Art. 1608, C. C., permission either express or implied is meant. *Id.*

64. And that even at common law where a person holds property for himself adversely to another, who claims to be the owner, a principal action will not lie against the holder for the value of the use and occupation, which can only be recovered subsidiarily in an action to recover the property itself. *Id.*

## III. ACTION ON A LEASE.

65. Where an action was taken by a wife on lease of property belonging to her, but the lease proved to be made in the name of the husband.—*Held good. Mathewson & Fletcher, 5 L. N. 131, S. C., 1882.*

## IV. ACTION TO ANNUL LEASE OF MOVEABLES.

66. Le demandeur avait loué pour \$320 de meubles au défendeur; cette somme était payable mensuellement. Il demandait par son action, le paiement du loyer des mois échus et la rescision du bail, vu que le défendeur avait laissé s'écouler plusieurs mois sans payer. C'était une action intentée sous l'autorité de l'acte des locateurs et locataires. *Jugé*, qu'une action pour faire annuler un bail de meubles ne peut pas être intentée en vertu de l'article 887 du Code de Procédure Civile (acte des locateurs et locataires), qui ne doit s'appliquer qu'aux immeubles. *Monaïque & Clarke, 7 L. N. 361, C. C., 1884.*

## V. LEASE OF BUTCHERS' STALLS IN MARKETS.

67. The plaintiff having under lease from defendants a stall in the public market neglected to pay his licence fee but allowed another butcher to use it unlicensed. Thereupon the City took possession and excluded plaintiff. Action for damages and recovery of rent paid. *Held* that under the lease defendants had a perfect right to act as they did and action dismissed confirmed. *Miclette & City of St. Hyacinthe, 4 L. N. 382 S. C. R. 1881.*

(1). I. Dig. 592-113.

## VI. LIABILITY OF LESSEE.

68. Where proceedings were taken in revendication of a certain immoveable property, including the dwelling house, which was occupied by the person against whom the revendication was issued, and the house was destroyed by fire pending proceedings, judgment was subsequently rendered maintaining the revendication. *Held* that the holder of the property would be liable for the loss unless he could prove that the fire took place by *force majeure*, and would have taken place just the same if the property had been in the possession of the plaintiff. *Pilon & Brunette*, 12 R. L. 74, S. C. 1881.

## VII. LIABILITY OF LESSOR.

69. In an action by a lessee who had rented the premises for use as a boarding house and in consequence of the freezing of the water pipes occasioned by the fact that the lower story was not properly heated, the plaintiff was put to a great deal of annoyance and inconvenience. *Held* that the lessor was not liable in damages without being put regularly in default, by notice in writing where the deed was notarial, and in no case where the damage was not the result of his own negligence. *Marcel & Mathieu*, 7 L. N. 55, S. C. 1883.

## VIII. NOTICE TO QUIT.

70. A verbal lease of a house without any agreement as to its termination, can only be legally terminated by a three month's notice. *Goujeon & Yuile*, 26 L. C. J. 142, S. C. R. 1881.

## IX. PRESCRIPTION OF RENT AND TAXES.

71. Question as to the amount due by the defendant for rent and taxes. Plea that everything due before 1st May, 1876, was prescribed and tender of balance. *Held* that the claim of the lessor against the lessee to recover taxes which are made a part of the rent by the lease is prescribed by five years. *Outimet & Robillard*, 5 L. N. 8, S. C. 1881.

## X. RENT PAID IN ADVANCE.

72. A tenant who, in good faith has paid rent in advance to the proprietor, his lessor, cannot be compelled to pay the rent a second time in the event of the insolvency of the lessor, before the expiration of the term so paid for in advance, and the proceeds of the property being insufficient to pay the hypothecary creditor in full. *Dupuy & McClanaghan*, 4 L. N. 276, & 27 L. C. J. 61, S. C. R. 1880.

## XII. RIGHTS OF LESSEE.

73. The *saisie-gagerie par droit de suite* may be exercised against the lessee eight days from his departure and even after the expira-

tion of the lease saving the rights of third parties. *Thouin & Rosaire*, 7 L. N. 287, C. C. 1879.

74. Action for resiliation of lease and damages occasioned by repairs. Plea that the repairs were urgent and necessary, that the defendant had done all that was possible to prevent loss or injury to plaintiff, and had endeavored to finish the repairs in the shortest possible time, and that the plaintiff had consented to the repairs being made whilst he was in the house.—*Held*, dismissing action on the authority of several cases therein cited. *Gauvreau & Roy*, 4 L. N. 415, S. C. 1881.

75. Le demandeur ayant fait saisir un immeuble sur le défendeur, l'opposant produit une opposition *afin de charge*, demandant que la vente n'ait lieu qu'à la charge de son bail. Il allègue un bail authentique pour l'espace de huit ans, et l'enregistrement de ce bail en date du 22 novembre 1878. Cette opposition est contestée par l'opposant afin de conserver. The latter had a bailleur de fonds claim on the property, he having sold to the defendant who was the brother of the opposant *afin de charge*. The question was whether the lease constituted a charge on the property.—*Held* that under Articles 1663 & 2128 of the Civil Code, that it was subject to the lease but that the lessee would be ordered to give security, that it would realize sufficient to satisfy the bailleur de fonds. *Dupuy & Bourdeau*, 6 L. N. 12, S. C. 1881.

76. Action by a lessee against his lessor for damages caused by a flow or leak of water from the pipe in the third story of a building which had been let to another tenant who had abandoned the place.—*Held* that the relations of the landlord to the other tenants did not make him *garant* for the latter's negligence and he was not therefore responsible for *troubles de fait* of this kind. *Pigeon & Roussin*, 4 L. N. 326, S. C. 1881.

77. Action for \$197, based on alleged loss and inconvenience suffered by the taking down and rebuilding of a mitoyen wall. It was proved that proper precautions had been observed and there was no unnecessary delay or neglect. Action dismissed. *Chausse & Lareau*, 4 L. N. 351, S. C. R. 1881.

78. In an action to set aside a lease.—*Held* Que le locataire est tenu de donner une possession complète et utile de l'héritage loué avant de pouvoir forcer le preneur de remplir aucune de ses obligations. Ainsi le locateur ne pourra opposer à son locataire qui demande la résiliation du bail parce que l'immeuble ne lui a pas été livré tel que convenu, que le locataire n'a pas en rentrant en possession garni les lieux tel que le veut la loi. *Lemonier & DeBellefeuille*, 5 L. N. 426, S. C. 1882.

79. Et que dans un bail d'un immeuble, cette clause: "Et il est expressément convenu que le dit bailleur sera tenu, lo de faire nettoyer le puits et d'y poser un appareil pour y puiser de l'eau," implique nécessairement l'obligation de mettre le puits

en question en état de fournir l'eau nécessaire pour l'exploitation de la maison louée, et qu'à défaut de remplir cette obligation, le locataire peut faire résilier le bail et faire condamner le locateur aux dommages en résultant. *Id.*

80. *Per curiam*.—In this case a question between landlord and tenant had been raised, and Mr. Justice Doherty, in disposing of it, had followed the established practice since the case of Boulanger and Doutre; that is to say, that if a tenant making repairs wishes to have them paid for by his landlord, he must get the authority of the Court before making the repairs. The tenant in the present case did not adopt that mode of proceeding. He made extensive improvements, and then wished to make the landlord responsible for the cost. This pretension could not be maintained, and the judgment would, therefore, be confirmed. *Ibbotson & Fowler*, S. C. R. 1882.

81. Where the building leased was in a dangerous condition, and was sinking, owing to weakness of the foundation, and the Building Inspector of the city had condemned it as unsafe, held, that the lessee was justified in abandoning the premises, and was entitled to recover from the lessor all damages thereby suffered by him. *Wright & Gall*, 6 L. N. 42, S. C. 1883.

82. In an action in ejectment on the ground that the lessee had, contrary to the stipulations of the lease, converted the shed into a stable in which he kept a horse. Held to be no violation of the stipulation of the lessee by which defendant undertook to make no change or improvement in the premises without the consent of the lessor. *Méthot & Jacques*, 7 L. N. 384, C. C. 1884.

83. Action to resiliate a lease of premises in which a fire had occurred and which the lessee pretended had rendered the place uninhabitable. This demand was contested by the lessor on the ground that the fire was occasioned by the negligence of plaintiff and his employees, and in any case the place was not rendered uninhabitable and plaintiff was not entitled to the resiliation of the lease. Held that though the leased premises had become temporarily uninhabitable during necessary repairs occasioned by a fire which had damaged a portion of the premises, the lessee could not obtain the resiliation of the lease without rebutting the presumption of law that the fire was caused by his fault, and a mere theory as to the origin of the fire will not exonerate the lessee from this presumption; and in the present case the theory suggested by the evidence would, if proved, establish the lessee's responsibility for the fire in question. *Desola & Stephens*. 7 L. N. 172, S. C., 1884.

### XIII. RIGHTS OF LESSOR.

84. A horse left in the possession of a tenant by a third party is not liable to seizure

and sale by the landlord in payment of his rent, if the landlord had notice that the tenant was not proprietor of the horse. *Sheridan & Tolan*. 5 L. N. 298, S. C., 1882.

85. Action of ejectment and for damages alleged to have been caused in consequence of the lessee not having delivered the premises at the expiration of the lease. The lease expired according to plaintiff's pretensions on the 30th April, the action was instituted on the 4th May by a writ of attachment under which the furniture of the defendant was seized. The plaintiffs did not claim any rent but merely damages for non-delivery of the premises. The lease was a verbal one. Held that under such circumstances the lessor could join with his action a *saisie gagerie* to secure the damages to be awarded. *Langlois & Roque*. 5 L. N. 156, C. C., 1882.

86. Before the expiration of the first year the defendant abandoned the premises leased without giving notice to the landlord's agent and made a transfer of all his stock in trade to one of his principal creditors (the present *tiers-saisie*). The landlord's agent thereupon and within the eight days immediately following the transfer issued a *saisie-arrest avant jugement* in the hands of said creditor and subsequently contested his declaration that he was not indebted to the defendant on the ground that the transfer so made was fraudulent and that the *tiers-saisie* well knew defendant to be insolvent at the time of the transfer, basing their right of contestation on the fact that they had a lien and *droit de rétention* on the effects so transferred for the amount of rent due and to become due under the lease. Upon proof it was established that the goods transferred were of sufficient value to cover the amount claimed that the defendant was notoriously insolvent of which the *tiers-saisie* had certain knowledge, and that although the transfer had been made with the understanding that the latter was to divide the proceeds of the sale of the effects *pro rata* with the other creditors. no such division had been effected and no provision had been made to guarantee the rent so claimed. Seizure maintained. *Lyman & McDiarmid*, 6 L. N. 162 S. C., 1883.

87. Rent not yet due by the terms of the lease becomes due and exigible by the insolvency of the lessee. *Hamilton & Valade*, 7 L. N. 15, S. C. R. 1882. & *Menard & Pelletier*, *Id.* S. C. 1883.

88. Opposition filed by opposants, claiming as their property a pair of horses, a wagon, a sleigh and a set of double harness, seized under process of *saisie-gagerie* by the plaintiff for rent or its accessories, and in possession of the defendants. The defendant was the husband of the tenant. Held that where it appeared that the effects seized by the lessor on the premises leased, consisting of horses and vehicles, were continuously in the possession of the husband of the lessee, though they were used by him in travelling most of



the time, the exception mentioned in the latter part of Art. 1622, C. C. excluding effects transiently on the premises, was held not to apply. *Thomas & Coombe*, 7 L. N. 77, S. C. R. 1883.

89. Where a fire had occurred in leased premises and the lessee brought action to resiliate the lease on account of their condition. *Held*, dismissing the action, that a clause in the lease stipulating that the lessee shall deliver up the said premises at the expiration of the said lease in as good order as the same shall be found in at the commencement of the present lease, reasonable wear and tear and accidents by fire excepted, it is not a waiver on the part of the lessor (1) of the presumption established by Art. 1629, C. C. but merely expresses the provision of Art 1632, C. C. (2) *DeSola & Stephens*, 7 L. N. 172, S. C. 1884.

90. *Where lessee insolvent*.—Revision of a judgment settling the amount of the claim of a landlord against the insolvent estate of his tenant. The judgment complained of allowed one year's rent under a six year's unexpired lease. By the lease the tenant had a right to terminate in May 1880, by giving six month's notice. The year allowed by the judgment just went to the 1st May, 1880, and the creditors had terminated the lease in May, 1879, since which time the lessor had had possession. Judgment confirmed. *Stafford & Joseph*, 4 L. N. 51, S. C. R. 1881.

#### XIV. RIGHTS OF SUB-LESSEE.

91. The plaintiffs and defendant had agreed about the 30th June, 1882, to resiliate the lease between them, in consequence of a fire which had destroyed in great part the premises leased.—*Held* that defendants were liable for the full rent to the 1st August, 1882, as they had not completely vacated the premises until that date; there being no claim for, or proof of the value of any diminution of rent. *Penny & Montreal Herald Co.*, 27 L. C. J. 83, S. C. 1883.

92. But that defendant had done all in its power to give plaintiff possession of the portion of premises sublet to C.; for although C. was quite willing to remain in possession, notwithstanding the fire, to the end of his lease, the plaintiffs had a right to claim the resiliation of the lease and sub-lease, as it was estab-

(1) When loss by fire occurs in the premises leased there is a legal presumption in favor of the lessor that it was caused by the fault of the lessee or of the person for whom he is responsible; and unless he proves the contrary he is answerable to the lessor for such loss. 1629 C. C.

(2) If a statement have been made between the lessor and lessee of the condition of the premises the latter is obliged to restore them in the condition in which the statement shows them to have been with the exception of the changes caused by age or irreparable force. 1632 C. C.

lished that the premises leased formed an establishment extending from St. James street to Fortification lane, that the retention of said portion by C. would have grave inconvenience to plaintiffs, and that the exigencies of commerce and of tenants required that the property should be entirely rebuilt, and that the new building should extend from St. James street to Fortification lane. And that, under the circumstances, C.'s right to any damage he may suffer by the resiliation should be reserved to him. *Ib.*

93. That the default of defendant to pay rent was owing to the uncertainty existing as to its amount and to the retention of part of the premises by C., and that the lease consequently should not be resiliated for non payment of rent. *Ib.*

94. That the action *en garantie* was, under the circumstances, unfounded. *Ib.*

95. But in another case to resiliate the sub-lease, arising out of the same facts.—*Held* that the sub-lessee could not be disturbed. 11 R. L. 605, S. C. 1882.

#### XV. SUB-LEASE.

96. Le demandeur avait loué une maison au défendeur, et ce dernier, quoique la chose lui fut prohibée par son bail, avait sous-loué une partie de cette maison à l'opposante. Sur une saisie-gagerie par le demandeur, tous les meubles de l'opposante furent saisis comme garnissant les prémisses. Mais, cette dernière fit une opposition réclamant les meubles déclarés non saisissables par l'article 556 C. P. C. Sur contestation de l'opposition, la Cour a maintenu les prétentions de l'opposante, et main levée fut accordée de la saisie quant aux dits effets insaisissables. Le surplus de l'opposition fut renvoyée, chaque partie payant ses frais. *Jones & Albert*, 7 L. N. 277, S. C. 1877.

97. A clause in a deed of lease, prohibiting sub-letting without the consent in writing of the lessor, and his approval of the sub-tenant, is not so absolute that the lessor may refuse to accept of any sub-tenant offered, and, consequently, the lessee may cede all rights under the lease to a person proved to be as acceptable a person as the lessee, notwithstanding the refusal of the lessor to accept of such sub-tenant. *David & Ritcher*, 27. L. C. J. 313, & 12 R. L. 98, S. C. 1882.

98. Where the Société du journal *Le Nouveau-Monde*, sold all their plant including the lease of the premises occupied by them to the respondent, and the respondent a few days afterwards transferred all his rights in them to appellant who occupied the same for years thereunder, and then refused to pay the rent.—*Held*, dismissing all his pleas. *Ouimet & Desjardins*, 1 Q. B. R. 58, Q. B. 1880.

99. Notwithstanding a stipulation in a lease that the lessee of land on shares shall not sublet without the consent in writing of the lessor, the tacit acquiescence of the lessor in

his suspicions to an employment agent from whom he had obtained her, by which she lost a situation she then had.—*Held* to be privileged and action dismissed. *McDonald & Ryland*, 5 L. N. 291, S. C. 1882.

117. Action by municipal officer for damages for slander. *Per curiam*.—The appellant is charged with having accused respondent specially "d'avoir prélevé trente louis au lieu de dix huit louis et d'avoir mis la balance dans sa poche;" "d'avoir fait de l'argent avec la dite cotisation," and there is an innuendo also "qu'il buvait trop pour pouvoir remplir sa charge, parce qu'il était toujours ivre." The defendant admits that he used these words: "M. B. boit trop, cela l'empêche de remplir bien ses devoirs de secrétaire trésorier; il a prélevé sur la municipalité des montants plus élevés que ceux que le conseil de la paroisse l'avait autorisé à prélever," but he pleads that he used these words without malice, in his own interest and in the performance of the duties of his office as municipal councillor. — *Held*, reversing the judgment which condemned the defendant, that he had reasonable cause for so doing, and the words were within the limits of a privileged communication. *Cloutier & Blackburn*, 5 L. N. 420, Q. B. 1882.

118. A statement made by the honorary lady president of a benevolent institution to the managing Committee, respecting an employee of the institution, is privileged, and cannot serve as the basis of an action for defamation of character. *Donoghue v. Hervey*, 5 L. N. 357, S. C., 1882.

119. A letter written to a private person and written to him privately without any chance of publicity, is a privileged communication, and damages for libel will not lie. *Burnstein & Davis*, 7 L. N. 378, & M. L. R. 1, S. C., 67, 1884.

120. A report made by a foreman in the course of his duty, and without malice, respecting men in his gang, which caused the men to be discharged, is a privileged communication. *Surprenant & Gobeille*, 7 L. N. 195, S. C., 1884.

## XII. PROFESSIONAL PRIVILEGE.

121. On the 6th October, 1882, the defendant, a member of the Montreal Bar, was engaged before the Recorder in the defence of a woman charged with keeping a house of ill-fame. The plaintiff was the principal witness for the prosecution. Before the trial came on defendant, was informed that plaintiff was circulating a statement to the effect that the accused had admitted her guilt to him. Entertaining some doubt as to the correctness of this statement, defendant communicated with his client, who emphatically denied the report, and added. "If the witness makes such a statement on oath he will be perjuring himself, and I authorize you to make a declaration to this effect before the Court." The case came on for trial, and plain-

tiff did depose that the accused kept a house of prostitution, and that she had admitted the fact to him. Thereupon defendant exclaimed: "*Ce que vous dites là est un mensonge; vous vous parjurez; vous êtes un parjuré!*" On this plaintiff brought action, claiming \$100 damages.—*Held* that no action lies against an advocate for words spoken by him in the discharge of his professional duty before the Court, unless the words complained of are foreign to the case in which he is at the time engaged. *Gauthier & St. Pierre*, 7 L. N. 44 & 28 L. C. J. 16, S. C., 1884.

## XIII. RECONCILIATION.

122. Although the presumption of reconciliation in a case of slander is, as a general rule, favorably received, it is not so where the slanders complained of are atrocious and dictated apparently by persistent malice. *Veuilleux & Lanouette*, 5 L. N. 419, Q. B., 1882.

## XIV. SLANDER.

123. *Justification of*.—Plaintiff was a school teacher and organist in the parish of St. Lazare. She brought an action for \$399 damages, alleging that the defendant had publicly denounced her by several names implying that she was a woman of immoral character; that these reports had damaged her character so much that she was obliged to resign her offices of school teacher and organist; that teaching was her sole means of subsistence, &c. The defendant pleaded that the plaintiff had resigned her situation before he said anything; that injurious reports were in circulation respecting her; that the chairman of the School Board called upon her for an explanation; and that she preferred to resign rather than attempt to justify herself. Some people were discussing these events, which had given rise to some excitement in the parish, and the defendant who was present, joined in the conversation. Another person present used strong language with reference to the plaintiff, and the defendant took his side. The Court was of opinion that the defendant could not excuse himself by saying that other people had made similar charges against the plaintiff. The injurious expressions used by the defendant were proved, and the plaintiff would have judgment for \$100 damages, with costs of an action for that sum. As the action was brought for too much, the plaintiff would be condemned to pay the difference of costs of contestation of the action as brought over those of an action for \$100. *Gareau & Montpellier*, S. C., 1882.

## LICENSE INSPECTOR.

I. NAME OF CHANGED *See* Q. 46. *Vin. Cap. 6*,

## LICENSE LAW.

I. ACT AMENDING Q. 44-45. VICT. CAP 4; AND Q. 45 VICT. CAP 9.

II. ACT CONCERNING DUTIES UNDER *See* Q. 46. VICT. CAP 5.

III. ACT SUSPENDING THE OPERATION OF THE LICENSE ACT, 1883. C. 48-49. VICT. CAP. 73.

IV. ACTION FOR SELLING TO HABITUAL DRUNKARDS.

V. CANADA TEMPERANCE ACT AMENDED. C. 47. VICT. CAP 31.

VI. CIDER.

VII. CONSTITUTIONALITY OF.

VIII. CONVICTION UNDER.

IX. DOMINION ACT RESPECTING C. 46 VIC. CAP 30.

X. HABITUAL DRUNKARDS.

XI. JURISDICTION OF RECORDER'S COURT.

XII. LICENSE ACT OF 1883 AMENDED C. 47. VICT. CAP 32.

XIII. LICENSE IN CITIES.

XIV. PENALTY UNDER.

XV. POWER OF COMMISSIONER TO REFUSE LICENSE.

XVI. POWER TO LICENSE.

XVII. PROSECUTION UNDER.

XVIII. REVOCATION OF LICENSE.

XIX. RIGHT OF LOCAL LEGISLATURE CONCERNING *See* LEGISLATIVE AUTHORITY.

XX. STORAGE OF GUN POWDER.

XXI. SUMMONS.

XXII. TAVERN SIGNS.

XXIII. VALIDITY OF ACT.

XXIV. VIOLATION OF ACT.

IV. ACTION FOR SELLING TO HABITUAL DRUNKARDS AFTER NOTICE.

124. In an action against a hotel keeper for having sold liquor to the husband of plaintiff, after notice, in violation of sections 96, 97 and 98 of the Licence Act of 1878. *Jugé*:—Que la désignation du défendeur comme hôtelier, dans le bref de sommation, est suffisante aux termes du par. 4 de la 1ere section de l'acte des licences de 1878. *Cayionette & Girard*, 7 L. N. 383 & M. L. R. 1 S. C. 117, 1884.

125. Et que la section 95 du dit acte s'applique non seulement aux personnes licenciées pour la vente des boissons enivrantes, mais aussi à celles qui en vendent habituellement sans licence. *Ib.*

126. Que l'action autorisée par les sections 96, 97, 98 du dit acte, est une action en indemnité d'un caractère purement civil, et est soumise aux règles ordinaires de la procédure. *Ib.*

127. Et que cette action peut être indistinctivement soumise à la Cour ou à un jury au choix des parties. *Ib.*

128. Et que le demandeur doit alléguer et prouver que le défendeur savait, au moment de la vente, que la personne à laquelle il avait vendu était la personne désignée dans l'avis qu'il a reçu. *Ib.*

## VI. CIDER.

129. Petitioner was convicted of selling liquor without licence. It was pretended that the liquor sold was a mere imitation of cider, free from any intoxicating principle. Cider is enumerated in the licence act among intoxicating liquors and the preparation in question, did in fact contain over two per cent of alcohol. Conviction held good. *Noel Exp.* 6 L. N. 150, S. C. 1883.

## VII. CONSTITUTIONALITY OF.

130. The Licence Act of Quebec 42-43 Vic. Cap. 4 is constitutional. *Poulin & Corporation of Quebec*, 7 Q. L. R. 337, Q. B. 1881.

## VIII. CONVICTION UNDER.

131. Petition for a writ of prohibition against a conviction of the petitioner by the Judge of Sessions for having sold liquor without a licence. The conviction was founded on a complaint that—"B. C., à la cité de Québec, dans la maison et les prémisses là situées et occupées par le dit B. C., savoir: Le vingt-cinquième jour de mars dernier, en différent temps avant et depuis, dans les six mois dernièrement écoulés, vendu en détail, en quantité moindre que trois gallons à la fois et moindre qu'une douzaine de bouteilles de trois demiards chacune à la fois, certaines boissons enivrantes savoir: du 'whiskey' sans avoir la licence requise par les statuts en tels cas faits et pourvus, et ce contrairement aux dits statuts." The same complaint was repeated nine times with the difference merely of a different liquor each time and each time concluded with the statement that the said B. B. was liable to a penalty of \$75 for each of the different offenses. The petitioner pretended that this ascribed to the magistrate a jurisdiction beyond \$100 which by the statute he did not possess and also that it set out nine different offenses in the same information and complaint.—*Held* that the repetition comprised only one charge and one conviction, and there was consequently no excess of jurisdiction. *Côté & Chauveau*, 7 Q. L. R. 258, S. C. 1880 (1).

132. A conviction rendered by a district magistrate for selling liquors without licence, condemning defendant to pay a penalty of \$75, and in default of paying to be imprisoned for three months is legal, and the execution of the sentence will not be hindered by prohibition. *Côté & Paradis*, 11 R. L. 1, Q. B. 1881.

## X. HABITUAL DRUNKARDS.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:  
The following paragraph is added to article 96 of

(1) Confirmed in appeal. 1 Q. B. R. 376, Q. B. 1881.

"The Quebec License law of 1878." "And every person, whether a minor or of the age of majority, who purchases, from any person licensed under this act or unlicensed, intoxicating liquors for a person reputed to be an habitual drunkard, is liable for each such offense to a penalty not exceeding fifty dollars or an imprisonment not exceeding three months, in default of payment." Q. 48 Vic. Cap. 8.

#### XI. JURISDICTION OF RECORDER UNDER.

133. In a proceeding against the Petitioner before the Recorder, under the Quebec License Law the revocation of petitioner's license as hotel keeper was asked for. *Held* that even if the license law did not sustain the demand for revocation of license, the Recorder, nevertheless, has jurisdiction to try the case and the defendant's remedy was by *certiorari*. *Hogan Exp.* 6 L. N. 317, S. C., 1883.

#### XIII. LICENSES IN CITIES.

134. The respondent in two cases, arising on writs of *mandamus*, having in May, 1880, required the appellant, Inspector of licenses at Three Rivers to grant him a license for a tavern in Three Rivers for a year on payment of \$100 for the costs of the license and on furnishing two sureties which the Inspector refused to do. — *Held*, that the appellant was not bound to grant a license to the respondent, except on receipt of the sum of \$70 in virtue of sub sec. D. sec. 63, of 41 Vic. Cap. 3. *Lasalle & Bergeron, and Lasalle & Riendeau.* 1 Q. B. R., 257. Q. B., 1881.

#### XIV. PENALTY UNDER.

135. Under the Quebec License Law, the penalty and costs should be paid to the collector of Provincial Revenue whether the suit be taken by an informant or by a municipal corporation. *Corporation & Lauzon, & McKibbin.* 9 Q. L. R., 383. C. C., 1883.

#### XV. POWER OF COMMISSIONERS TO REFUSE LICENSE.

136. Petition for a writ of *mandamus* to compel the corporation of the Village of Hochelaga to accede to the wish of petitioner for a confirmation of his certificate and for a license to sell liquor. The petitioner alleged that he had furnished the requisite certificate signed by 25 electors, resident within the limits of the municipality, that he had a license up to May, 1881, (last past) and that the council refused to confirm his certificate and renew his license. *Per Curiam*.—I have looked to see whether the law has been changed since the case of *Privitt & Sexton*, in 1874. It was there held that the then license commissioners at Montreal were not bound, under 37 Vic. Cap. 3, to confirm the certificate of 25 electors but had a discretion and the application for *mandamus* was rejected. The law does not seem to be changed in this respect and I am of opinion that the

council has a discretion to refuse to confirm the certificate if it sees fit. *Smart & the Corporation of the Village of Hochelaga.* 4 L. N., 255. S. C., 1881.

#### XVI. POWER TO LICENSE.

137. A power to license under the City charter of the City of Montreal does not include a power to tax for revenue purposes. *Walker & City of Montreal.* 5 L. N., 201, S. C., 1882.

#### XVII. PROSECUTIONS UNDER.

138. Under the License amendment Act of 1874 (37 Vic., Cap. 3, Sec. 11), actions or prosecutions for offenses committed against the license law may be brought by any private individual, and a conviction at the suit of A. B., deputy revenue officer, is good, as the prosecution was by and in the name of a private individual. *Ochslerger Exp.*, 1 Q. B. R. 99, Q. B., 1880.

139. And it is not necessary by the conviction to condemn the defendant to pay the costs of the warrant of commitment, nor those for conveying defendant to gaol, as this is ordered by C. S. C., cap. 103, ss. 62 & 69. *Id.*

#### XVIII. REVOCATION OF LICENSE.

140. On a *certiorari* from a conviction by the police magistrate for selling liquor without license and revoking the certificate of the petitioner.—*Held* that the magistrate was within his powers in so doing. *Molinari Exp.*, 6 L. N. 395, S. C., 1883.

#### XX. STORAGE OF GUNPOWDER.

Whereas it is expedient to further amend the existing regulations respecting the storage of gunpowder or other explosives required to be used in quarrying; therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

The following paragraph is added to article 185 of the Quebec License Law of 1878.

"The Lieutenant Governor in Council may, notwithstanding any law to the contrary at present in force, on such conditions and under such regulations, as he deems fit, permit the storage of gunpowder and other explosives in the vicinity of any quarries, being worked in the Province of Quebec, although the same may be in proximity to cities or towns." Q. 48 Vic., Cap. 9.

#### XXI. SUMMONS.

141. Prosecution under the License Act of 1878. The summons was granted by D. Murray, Esq., Justice of the Peace, appointed under the Act 33 Vic., Cap. 12. The summons was an order to appear before him or other justices of the District and was signed D. Murray, J. P. Defendant pleaded that he was not regularly summoned because the License Act, Sec. 196, required that these cases be instituted (*soient intentées*) before two Justices of the Peace, while it did not

appear by the signature of the magistrate that he had the jurisdiction of two Justices. *Held*, that the signature was in every respect sufficient. *La Corporation de St. Raymond v. Savary*, 7 Q. L. R. 318, S. P., 1881.

## XXII. TAVERN SIGNS.

142. When a tavern keeper has a licence to sell spirituous liquors and afterwards changes his licence to one for a temperance hotel only, and uses the same sign but without the words licence to sell spirituous liquors, he cannot be held liable for a violation of the provisions of the Licence Act, 41 Vic. Ch. 3, S. 78. (1) *Crépeau & Loiseau*, 12 R. L. 139, C. C. 1882.

## XXIII. VALIDITY OF ACT.

143. On a prosecution for selling liquor without license in contravention of the License Act of 1878.—*Held* that to prevent the sale of liquor was in restraint of trade and *ultra vires* of the Local Legislature, but as the defendant had not first put the Municipality and License Inspector in default to grant him a license that he was liable to a fine. *DeSt-Aubin & Lafrance*, 8 Q. L. R. 190, C. C. 1882.

## XXIV. VIOLATION OF ACT.

144. Where a licence to retail spirituous liquors was granted to a person who merely sold liquor as bar keeper for another.—*Held* that there was not a violation of the License Act, and that the owner might oppose the seizure of his goods when taken in ejectment under a judgment against the licensee. *Citizens Insurance Co & Warner*, 6 L. N. 54, S. C. 1883.

## LICITATION See PARTITION.

### I. DELAY TO CONTEST CAHIER DE CHARGES.

145. Action in licitation. In accordance with the judgment, the immovables were advertised for sale. In the *cahier de charges*

(1) Any person not being the holder of any one of the licences herein above mentioned who exhibits, causes to be exhibited, or allows the exhibition in or any part of his house or its dependencies of any sign, inscription, painting or any other sign whatsoever, of a nature to induce the public or travellers to believe that the sale of intoxicating liquors is authorized therein in any quantity, and that he is the holder of a license to that effect, is liable to a fine of twenty dollars for each contravention. The same penalty is incurred by any licensee, who by any of the means mentioned in this article, seeks to induce the public or travellers to believe that he holds a different license than that which has been granted to him.

one of the properties was advertised to be sold subject to the charges contained in the deed of donation under which the plaintiffs and the defendants derived their title. One P., to whom the defendant had given several mortgages failed to file, within the delay allowed him, an opposition setting forth his claim and without in any way referring to the incumbrances already existing upon it and created by the deed of donation, produced two days only before the day appointed for the sale an intervention contesting the secured claims mentioned in the *cahier de charges*. Motion to reject the intervention as too late granted with costs. *Savard & Savard*. 8 Q. L. R. 287, S. C., 1881.

## LIEN see PRIVILEGE.

## LIFE INSURANCE See INSURANCE.

## LIQUIDATION.

### I. OF BUILDING SOCIETIES See BUILDING SOCIETIES.

## LIQUIDATORS.

### I. ACTION TO SET ASIDE SALE BY See BUILDING SOCIETIES.

### II. POWER OF TO MAKE CALLS See COMPANIES, JOINT STOCK.

## LIQUID MEASURE See INSPECTION LAW.

### I. CONVICTION FOR SELLING See LICENSE LAW.

## LOAN.

### I. ADMISSION OF LIABILITY.

### II. PRESCRIPTION OF.

### I. ADMISSION OF LIABILITY.

146. Where A, applied to B, for a loan and B, accepted a draft drawn by C, which A, subsequently admitted was for his assistance and he paid B, part of the amount of the draft and promised to pay him the balance, *held* that A, was liable to B, for such balance. *Ross & Vanneck*. 4 L. N. 316, S. C., 1881.

### II. PRESCRIPTION OF.

147. An action for the recovery of a loan,

not of a commercial nature, is not prescribed by five years and where a *bon* or note has been given in acknowledgement of such loan, which *bon* or note is prescribed, the action may be brought on the loan, but the *bon* or note will not be admitted as proof of it. *McDonald & Dillon*. 6 L. N., 291, S. C., & 27 L. C. J. 214, & 388, S. C. R., 1883.

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### LOAN COMPANIES.

I. WINDING UP OF WHEN INSOLVENT, *see* C. 45 VICT., CAP. 23, & C. 46 VICT., CAP. 23, & C. 47 VICT., CAP. 39.

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### LOCAL LEGISLATURE—*See* LEGISLATURE.

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### LOCATEURS ET LOCATAIRES—*See* LESSOR AND LESSEE.

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### LOCATION TICKETS.

I. RIGHTS UNDER *see* CROWN LANDS.

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### LOCUS REGIT ACTUM.

I. WHEN GOVERNS *see* LAW.

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### LOSS AND DAMAGE—*See* DAMAGES

### LOTTERIES.

I. AMENDING ACT *see* C. 46 VIC., CAP. 35.

II. LEGALITY OF.

148. Plaintiffs action was to have a vehicle delivered to him, which he had drawn in a bazaar lottery held for benevolent objects. The question as to the legality of the lottery had been raised, but the Court would follow the rule laid down by the Court of Appeal in the *McShane* case, and hold that the question of legality could not be raised by the depository. *Mercias vs. Gervais*. S. C. B. 1882.

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### LOYER—*See* LEASE, LESSOR AND LESSEE.

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### LUNATICS.

I. MAINTENANCE OF *see* Q. 46 VIC. CAP. 18.

II. SANITY OF *see* LUNATIC ASYLUMS.

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### LUNATIC ASYLUMS.

I. ACT RESPECTING *see* Q. 48 VIC. CAP. 34.

II. TRIAL OF SANITY OF PATIENTS.

149. On a petition for the discharge of a person confined as a lunatic, the Court found that the testimony of physicians who had examined the patient was conflicting, and in particular the opinion of the physician resident in the asylum was in conflict with that of the attending physician. *Held*, that under the circumstances the Court would order an examination of the patient by a disinterested party before pronouncing upon the petition for discharge. *Perry & Church*, 7 L. N. 330, S. C., 1884.

# M

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## MAGISTRATES.

## I. LIABILITY OF.

II. MANDAMUS AGAINST FOR REFUSING TO RECEIVE INFORMATION *see* MANDAMUS.

## III. POWERS OF.

## I. LIABILITY OF.

1. A magistrate acting within the limits of his authority and without malice is not liable to an action of trespass, though he may have given an erroneous judgment. *Roy & Pagé*, 5 L. N. 32 and 27 L. C. J. 11, S. C. R. 1881.

## III. POWERS OF.

2. The police magistrate on a complaint by the revenue inspector for selling liquor without licence may decide on the whole accusation without distinguishing between the different offenses mentioned in the complaint, when they are all of the same nature. *Molinari exp.* 6 L. N. 395, S. C. 1883.

## "MALICE AFORETHOUGHT"

## I. OMISSION OF WORDS FROM INDICTMENT.

3. On a reserved case, it appeared that the words "feloniously and of his malice aforethought" were omitted in the averment of the intent, in a count of an indictment for wounding with intent to murder. *Held*, that the count was insufficient and that the offense was not described in the words of the Statute. *Regina & Bulmer*, 5 L. N. 287, Q. B., 1881.

## MANDAMUS.

## I. AGAINST MAGISTRATE FOR REFUSING TO RECEIVE INFORMATION.

## II. FORMALITIES IN WRIT OF.

## III. RIGHT TO.

## IV. TO COMPEL LICENCE COMMISSIONERS TO ISSUE LICENCE.

## I. AGAINST MAGISTRATE FOR REFUSING TO RECEIVE INFORMATION.

4. Plaintiff took a *mandamus* against defendant, a magistrate, for refusing to receive an information against an employee, for desertion and to issue his warrant. It appeared that at the time of the hearing another magistrate had issued a warrant and the employee had been convicted and condemned. *Held* there was no object in the *mandamus* and it must be dismissed. *Monette & Charette*, 4 L. N. 220. S. C., 1881.

## II. FORMALITIES IN WRIT OF

5. Exception to the form was taken by the

defendants to a writ of *mandamus* on the ground that the writ was not signed and furthermore was made returnable on a day different from that directed by the judge when allowed. *Mandamus* set aside on both these grounds. *Audy & les Commissaires d'Ecole de St-Charles Borromée de Charlesbourg*, 8 Q. L. R. 340, S. C., 1882.

## III. RIGHT TO.

6. Where a number of deeds are connected with the same agreement and one of the parties has not fulfilled the engagements undertaken by him, a *mandamus* will not be granted to compel the notary to complete by his signature a portion of the deeds, although the said deeds have been signed by both parties. *Dickson & Brault & Dickson & Leclerc*, 5 L. N. 322. S. C., 1882.

7. A *mandamus* will not lie against a railway company, to compel the company to fulfil a statutory obligation, such as the obligation to make and maintain railway crossings on the petitioner's property under the Quebec Railway Act, there being the remedy by ordinary action. *Dubuc & Montreal & Sorel Railway Co.*, 7 L. N. 5, S. C. R., 1883.

## IV. TO COMPEL LICENCE COMMISSIONERS TO ISSUE LICENCE.

8. On a petition to compel the corporation of Hochelaga to issue a license to sell liquor, on the certificate of twenty five rate payers, *held* that the law had not been changed since *Privett & Sexton* (1) and the council had a discretion to refuse to confirm the certificate. *Smart & Corporation of the village of Hochelaga*, 4 L. N. 255. S. C., 1881.

MANDAT—*See* AGENCY.

## MANITOBA.

I. BOUNDARIES OF, *see* C. 44 VIC., CAP. 14.MANUFACTORIES—*See* FACTORIES

## MARCHANDE PUBLIQUE.

I. PENALTY FOR NON REGISTRATION OF, *see* MARRIED WOMEN.MARINE INSURANCE — *See* INSURANCE.



# MARITAL AUTHORITY—See MARRIAGE.

## MARITIME LAW.

- I. COLLISION.
- II. CONTRACT TO TOW.
- III. JURISDICTION OF VICE-ADMIRALTY COURT.
- IV. OBSTRUCTION OF NAVIGATION.
- V. PILOTS.
- VI. PILOTAGE.
- VII. SALVAGE.

### I. COLLISION.

9. Where a sailing vessel on the port tack was overtaken in a dense fog and was struck in the stern by a steamship, after the former had complied with the rule prescribing blasts from her fog horn.—*Held* that the sailing vessel was not in fault for not showing a stern light, as the steamship could not be seen in time and that the speed of the steamship was too great, considering the fog, and therefore she was solely in fault. *The European, in re*, 8 Q. L. R. 72, V. A. C., 1881.

10. Where a steamship on a narrow channel on Lake St. Peter, was in the act of overtaking a steam tug, and the tow was so carelessly navigated as to create risk of collision, and one of the vessels in tow collided with her.—*Held*, first that the steamship was in fault for not keeping out of her way, and the tow to have been to blame for not keeping her course, and the damages would therefore be equally divided. *The Farewell*, 8 Q. L. R. 87, V. A. C., 1882.

11. Where a sailing vessel deviated from her course, contrary to the sailing rules, and came into collision with a steamer which might have avoided her, each held to be in fault and damages divided. *The "Manica" in re*, 8 Q. L. R. 379, V. A. C. 1882.

12. And where a steamer is charged with having omitted to do something which ought to have been done, proof of three things is required:—First, that it was clearly in the power of the steamer to have done the things charged to have been omitted; secondly, that if done it would in all probability have prevented the collision; and, thirdly, that it was such an act as would have occurred to any officers of competent skill and experience in command of the steamer. *Id.*

13. Upon the liquidation of an account by registrar and merchants in a case of collision for damages done by a ship to a wharf. *Held* that a claim for consequential damages not asked for in the libel nor awarded by a decree, cannot be considered by the registrar and merchants, and that if it had been such, damages could not be allowed by art. 1660

(1) of the Code nor by the maritime law. *Barcelona The, in re*, 8 Q. L. R. 193, V. A. C. 1882.

14. Where a sailing vessel and a steamship were meeting nearly "end on" and the former parted while the latter starboarded. *Held* that the former was in fault for not keeping her course and the latter for not stopping or slackening her speed. *The Bothal & The Nelson*, 8 Q. L. R. 163, V. A. C. 1882.

15. Where two ships in the harbour of Quebec from the violence of the wind and force of the tide, were accidentally brought into such proximity that each had a foul berth.—*Held* that both were in fault for not adopting the proper course to relieve themselves from their perilous positions, and thereby avoid a collision. *Arran The in re*, 9 Q. L. R. 278, V. A. C., 1883.

16. Where a vessel under charter was injured by collision caused by another vessel, the charter party providing that in case of damage the hiring should cease until she could be repaired. *Held* that an action by the charterers against the offending ship for the detention would not lie. *Nettleworth The in re* 9 Q. L. R. 359, V. A. C. 1883.

17. Where negligence was charged against a tug for running her tow aground in an intricate channel in the St. Lawrence:—*Held* that the accident was owing to the increased danger of the navigation at the beginning of winter. 2. That the immediate cause was the shutting out of lights and the buoys of the channel being invisible; and that the tow was to blame for navigating without a pilot. *Guelph The in re* 9 Q. L. R. 58, V. A. C., 1883.

18. Two vessels crossing, one on the starboard and the other on the port tack.—*Held* that the latter did not keep a proper lookout and the former did not keep her course, but ported helm too late to avoid a collision. *Signe The in re* 10 Q. L. R. 28, V. A. C. 1884.

19. A steamer proceeding at easy speed, on a thick and foggy night ran down a schooner lying at anchor on a fishing ground. The latter had a bright light burning and a fog horn blowing, and at sound of the steamer's whistle, some minutes before the collision, a flash light or flare up was exhibited and muskets fired which were heard on the steamer. *Held* that the steamer must be condemned, for not keeping a sufficient lookout, notwithstanding the schooner's infraction of the law in sounding a fog horn instead of ringing a bell, it appearing that this had not contributed to the accident. *Lohnes v. SS. Barcelona*. 10 Q. L. R. 305, V. A. C., 1884.

(1) If during the lease the thing be wholly destroyed by irresistible force or a fortuitous event or taken for purposes of public utility, the lease is dissolved of course. If the thing be destroyed or taken in part only, the lessee may, according to circumstances, obtain a reduction of the rent or dissolution of the lease, but in either case he has no claim for damages against the lessor. 1660 C. C.

## II. CONTRACT TO TOW.

20. Where an engagement was made on the Lower St. Lawrence with a tug to tow a ship to Quebec, Montreal and back to Quebec.—*Held* that the tug having towed the ship to Quebec and Montreal her owner could not transfer the contract to another to complete it, nor could he substitute an inferior tug with additional tow for the purpose. *Euclyd in re.* 7 Q. L. R., 351. V. A. C., 1881.

## III. JURISDICTION OF VICE ADMIRALTY COURT.

21. The promoter, and thirteen others shipped on board the American ship *Bridge-water*, 1600 tons at London for a voyage "from London to a port in the United States of America or to Cape Breton, and from thence on a general freighting voyage between the Columbia River North and Melbourne South." On arrival at the port of Quebec they brought suit for wages alleged to be due and prayed to be discharged from the ship on the grounds of deviation, uncertainty in the description of the voyage and insufficiency and unfitness of food. The Consul of the United States, upon receiving notice of suit, made a representation in writing accompanied by accounts, showing the promoters to be in debt to the ship and requested that the case should not be entertained. *Held* that the jurisdiction of the Court over causes of wages of foreign seamen being discretionary the Court would under the circumstances decline to proceed with the present suit. *The Bridge water in re.* 7 Q. L. R., 346, V. A. C., 1880.

22. The promoter, a pilot, was engaged by the respondent, owner of the *Farewell*, to pilot her from Quebec to Bic, the limit of the pilotage district, in the Lower St. Lawrence. At Bic, he was, without his consent, taken to sea, on the 21st November. On the 14th of December, at sea, he was transferred to the *Botgazza* of Dundee, taken to St. Thomas, thence to Havana by a steam vessel to New York, and by rail came to Quebec. By the 40th Section of the Dominion Pilotage Act, 1873, it is enacted "that no pilot shall, without his consent, be taken to sea and every pilot so taken shall be entitled to cabin passage, and over and above the pilotage dues, to the sum of two dollars per day from the day on which the ship passes the limits up to which he was to pilot her." The promoter, under this, claimed \$280.45. The respondent declined the jurisdiction on the ground that the Dominion Parliament has no legislative authority to enlarge or restrict the powers of this Court as one of Imperial creation. *Held*, that the Dominion Parliament may confer on the Vice Admiralty Courts, jurisdiction in any matter of shipping and navigation within the territorial limits of the Dominion, and when an Act of the Dominion Parliament is in part repugnant to an Imperial Statute effect will be given to its enact-

ments in so far as they agree. *The Farewell in re.* 7 Q. L. R. 380, V. A. C., 1881.

23. In an action against the ship *Barcelona*, by the lessees of a wharf for damage done by the ship in a collision with the wharf.—*Held*, that the Vice Admiralty Court Act, 1863, conferring jurisdiction on Vice Admiralty Courts, where damage was done by any ship did not extend to consequential damages to the traffic of a lessee. *Barcelona The, in re.* 8 Q. L. R. 343, V. A. C., 1882.

24. A suit of the master of a steam tug against the owner for wages and disbursements; *held*: That a Vice Admiralty Court cannot under "The Vice Admiralty Court Act, 1863," exercise its jurisdiction so as to give effect to an agreement between the owner and master of a vessel where the duties to be performed are miscellaneous and not incident to the situation of a master; that by the Dominion Statute, "The Seamen's Act, 1873," the jurisdiction of this Court, as respects vessels registered in the Provinces of Quebec, Nova Scotia, New Brunswick and British Columbia being restricted to claims for master's and seamen's wages over \$200, the 189th and 191st sections of the Imperial Merchant Shipping Act, 1854, are so far repealed as to reduce £50 stg., to \$200; that the "Vice Admiralty Court Act, 1863," has not in any way affected or repealed the 189th and 191st sections of "the Merchant Shipping Act, 1854"; that in a suit for ship's disbursements, brought by the master, who became liable upon condition that the owner did not pay them, there must be a demand on the owner before suit; Where a master sues for ship's disbursements without first presenting his accounts he can not recover costs. *Royal The in re.* 9 Q. L. R. 148, V. A. C. 1883.

## IV. OBSTRUCTION OF NAVIGATION.

25. The plaintiffs claims damages which they pretended to have suffered by running into the steamer *Ottawa* which was sunk in 1881, in the channel of the River St. Lawrence, where it obstructed navigation. The defendant was neither proprietor or in possession of the steamer at the time it was sunk, but had purchased it a few days before the accident, for the purpose of taking it to pieces. The persons who had been placed in charge of it, after it was sunk, were still in charge at the time of the accident but had kept no lights or other sufficient indications to prevent a collision. *Held* that the defendant was liable for the damages caused. *Baker & Freeman*, 10 Q. L. R. 368, S. C. R. 1884.

## V. PILOTS.

26. In a suit to recover pilotage.—*Held* that a ship exempt from compulsory pilotage, making the signal for a pilot, is liable for pilotage, even if she should afterwards refuse a pilot. *Corporation of Pilots & Brigantine Horsey*. 10 Q. L. R., 257. V. A. C., 1884.

## VI. PILOTAGE.

27. L'action était pour faire remettre à la défenderesse \$3,332.79 qu'elle a fait payer aux demandeurs, en 1881 et 1882, pour le pilotage, en bas de Québec, de divers steamers qu'ils faisaient naviguer entre Montréal et les provinces maritimes de la Confédération sur l'Atlantique, et qu'ils prétendent avoir été exempts des droits de pilotage. La défenderesse a plaidé une défense en fait niant spécialement que ces vaisseaux fussent exempts et une exception par laquelle elle allègue que les vaisseaux mentionnés dans l'action ont été pilotés par ses membres, à la demande de ceux qui les commandaient. Elle a fait cette preuve par l'affidavit de son président, qui, d'après un consentement exprès, vaut comme déposition dans la cause. *Jugé* : que les steamers de plus de 280 tonneaux enregistrés dans la Puissance, et ceux de plus de 30 tonneaux enregistrés ailleurs ne sont pas exempts des droits de pilotage pour le havre de Québec, et au-dessous, si leur patron ou leur second n'est pas un pilot licencié pour cette circonscription. *Bogue & Corporation des Pilotes*, 9 Q. L. R. 113, S. C. 1883.

28. Que les vaisseaux exempts de ces droits, qui emploient un pilote, lui doivent pour ses services le taux de pilotage fixé par la loi. *Id.*

## VII. SALVAGE.

29. Where a team vessel, while on fire in the Lower St. Lawrence, a derelict, was partially saved by a steam tug which towed her to the shore where beached, and afterwards sold by decree. *Held* that salvors were entitled to one third of proceeds of sale and costs. "*Progress*" *The in re.*, 9 Q. L. R. 156, V. A. C., 1882.

30. Upon a value of a ship of 1000 tons at \$5000, and her cargo at \$18000, a sum of \$610, was awarded to two tugs for salvage services during a gale of wind, and for reliving her from danger while exposed to wind and tide and aground on a rocky shoal that in the harbor of Québec. *Victory The in re.* 9 Q. L. R., 194, V. A. C., 1883.

31. Where a vessel with a valuable cargo was stranded in a dangerous place near Cap Rosier and salvage services were rendered by a passing steamer.—*Held* that as there was no danger to life or property incurred by the salvaging steamer in aiding to get her off, the sum of \$1000 was an adequate remuneration, but that a tender of that amount without costs was insufficient. *Carmona, The in re.*, 9 Q. L. R. 286, V. A. C. 1883.

## MARRIAGE.

## I. AGENCY OF HUSBAND FOR WIFE.

## II. AUTHORIZATION OF WIFE.

## III. EFFECT OF FOREIGN DIVORCE TO DIS-

SOLVE.

## IV. EFFECTS OF SECOND MARRIAGE WHILE FIRST EXISTING.

## V. LIABILITY OF HUSBAND.

## VI. LIABILITY OF WIFE.

## VII. NULLITY OF.

## VIII. POWER OF WIFE TO SUE.

## IX. PROCEEDINGS WITH REGARD TO CHILDREN.

## X. PROMISE OF.

## XI. SÉPARATION DE BIENS.

## XII. SÉPARATION DE CORPS.

## XIII. WITH DECEASED WIFE'S SISTER.

## I. AGENCY OF HUSBAND FOR WIFE.

32. Where the husband signed a contract of Insurance for his wife, *held* that her acceptance of the policy was a sufficient proof of his authority. *Mutual Fire Insurance Co. v. Desrousselles*, 5 L. N. 179, S. C., 1882.

## II. AUTHORIZATION OF WIFE.

33. The petitioner, a married woman separated as to property from her husband, an absentee in parts unknown, asked to be authorized to do business as a marchande publique and so earn a living for herself and child. Petition granted following 1 *Marcadé* on C. N. 220, No. 739. *Gagnon exp.* 4 L. N. 108, S. C. 1881.

34. A married woman separated as to property cannot bind herself without the authorization of her husband, to pay a real estate agent a commission on the sale of land for her. *Geddes & O'Reilly*, 6 L. N. 92, S. C. 1883.

35. A married woman separate as to property may without the authorization of her husband institute an action of damages for false reports published by mercantile agencies of her standing as a marchand publique. *Methot & Dunn*, 12 R. L. 634 S. C., 1884.

36. And in another case—*Held* unnecessary to summon the husband for the purpose of authorization, where his wife being separate as to property, has been sued on a note given to her creditors for the purpose of removing an hypothec on an immoveable belonging to her, inasmuch as the signing of the note is a mere act of administration and does not require authorization. *Dudevoir & Archambault* 12 R. L. 645, S. C., 1882.

## III. EFFECT OF FOREIGN DIVORCE TO DISSOLVE.

37. The plaintiff and defendant were married in New-York in 1871, without ante nuptial contract, both being domiciled in the city. By the laws of the State of New-York, no community of property was created by such marriage, the wife retaining her private fortune, free from marital control, like a *feme. sole*. Shortly after the marriage the appellant entrusted the respondent with the whole of her private fortune, consisting of personality to the amount of over \$200,000, and respondent administered this until 1876. The consorts lived in New-York until 1872, when they removed to Montreal where the respondent has ever since resided and carried on business

but appellant left him shortly after to take up her residence alternatively in Paris and New-York. In 1880, when respondent was still in Montreal, the appellant then in New York instituted proceedings for divorce before the Supreme Court of New-York, on the ground of adultery. The action was served on respondent personally at Montreal, and he appeared in the suit but did not contest, and appellant obtained a decree of divorce absolute in her favor in December, 1880. In 1881, appellant taking the quality of a divorced woman, and without taking judicial authorization, instituted an action against the respondent, in the Superior Court in Montreal, for an account of his administration of her property. The respondent pleaded that the alleged divorce was null and void for want of jurisdiction of the Supreme Court of New-York; that the appellant was in consequence still his wife and that she should have obtained authorization of the Court to institute the present action.—*Held*, reversing the decision of the Court of Queen's Bench (1), and restoring that of the Superior Court (2) that the Supreme Court of New York had jurisdiction to pronounce the divorce, and the divorce was entitled to recognition in the Court of the Province of Quebec. *Stevens & Fisk* 8 L. N. 42, Su. Ct., 1885.

38. And the Supreme Court of New-York, having under the Statute law of New-York jurisdiction over the subject matter in the suit for divorce, the appearance of the defendant in the suit, absolutely and without protesting against the jurisdiction estopped him from invoking the want of jurisdiction of said Court in the present action. *Ib.*

39. And that the plaintiff had at the institution of the action for divorce a sufficient residence in New-York to entitle her to sue there (3). *Ib.*

#### IV. EFFECTS OF SECOND MARRIAGE WHILE FIRST EXISTING.

40. The plaintiff, styling herself wife separate as to property of E. R., brought action for the pension due to widows of deceased pilots, out of the Pilots' fund, and set up that she had been married in good faith to one W. R. a pilot, since dead, while her previous and present husband was still living. The proof of good faith on plaintiff's part consisted in the verbal evidence that her husband had left the country in 1867. That four or five years afterwards she had received a letter informing her of his death: that she had gone in mourning for him and invoked the prayers of the church on his behalf and

(1) 6 L. N. 329 & 27 L. C. J. 228.

(2) 5 L. N. 79.

(3) The American doctrine of allowing the wife to establish a separate forensic domicile in divorce cases was incidentally quoted and approved.

that all her friends and relations believed him dead. She subsequently married her second husband, the pilot, and 17 months afterwards the first husband returned. She immediately recognized the nullity of her marriage with the pilot and left him, and took an action *en séparation de corps et de biens* from the first, on which, judgment was granted her in June, 1880. Just afterwards the second husband, the pilot died, and the first not being in a position to provide for her support, she brought action for her pension out of the pilot's fund relying on Article 163 C. C. (1) *Held* that though the nullity of the second marriage did not prevent her acquiring rights under it, still she could only avail herself of those opened before the nullity of the marriage was known, admitted and published, and her demand for a pension therefore could not be allowed. *Morin & Corporation des Pilotes*, 8 Q. L. R. 222, S. C. 1882.

#### V. LIABILITY OF HUSBAND.

41. The defendant's wife was suffering from mental derangement and he placed her in an asylum. The plaintiffs, her brothers, thinking that travel and change would benefit her, took her from the asylum and travelled in Europe with her against the will of her husband, who warned them that he would not be responsible. On action against him for moneys disbursed for her travelling expenses.—*Held* that he was not liable. *Hughes & Rees*, 5 L. N. 70, S. C. 1882.

42. L'action était portée en recouvrement d'une somme de \$61, valeur de services professionnels que le demandeur avait rendus en sa qualité de médecin à la femme du défendeur durant une période de cinq années. Le défendeur soutenait qu'il n'était pas responsable de cette dette; qu'il était marié sous le régime de la séparation de biens; qu'il avait un autre médecin qui était celui de sa famille; et qu'il avait fait annoncer dans les journaux qu'il ne serait pas responsable des dettes contractées en son nom sans une autorisation par écrit. *Jugé*, Que le mari est tenu pour la dette contractée pour les services du médecin rendu à sa femme, même lorsqu'ils sont séparés de biens. *D'Orsonnens & Christin*, 7 L. N. 338, C. C., 1884.

43. And in another case the Court said there is another case for the price of ice sold, and the defendants plead compensation by the price of goods sold to the wife. The plaintiff objects to this, on the ground of the separation between him and his épouse, but the compensation is not urged against the épouse but against the husband. She was his *mandataire* in buying these things and he is liable. Therefore the compensation is properly urged against the husband. This case

(1) A marriage although declared null, produces civil effects, as well with regard to the husband and wife as with regard to the children, if contracted in good faith. 163 C. C.

has nothing to do with the principle on which *D'Orsonnens v. Christin* was demanded. There, the husband was liable for medical attendance on his wife as *chef marital*, of the matrimonial union, though there was, as to property merely, a separation, but the obligation of the husband to preserve his wife's life and health is unimpaired by that. In the ice case the compensation is allowed, because the obligation of the husband is to provide those things and the wife *séparée* is his agent. *Christin & Hudon*, 7 L. N. 338, C. C., 1884.

#### VI. LIABILITY OF WIFE.

44. Case of *Bruneau & Starnes* (II Dig. 489-55) reported in *extenso*, 25 L. C. J. 245, Q. B., 1880.

45. Action against a married woman on an account for goods sold and delivered. The defendant was *séparée de biens* and bought the goods. There was no charge in the plaintiff's books to the husband. The goods were always charged to the wife and were necessities. *Per curiam*.—It is said that even for necessities a woman *séparée de biens* requires the authorization of her husband. I have often ruled against this pretension and I cannot hold otherwise now. C. C. 1318 (1) allows the wife perfect freedom to dispose of and alienate her moveable property, and to contract debts without her husband's authorization. *Brown & Guy*, 4 L. N. 264, S. C. 1881.

46. The wife, *sous puissance de mari et séparée de biens*, in buying necessities for the family, is presumed to act on behalf of her husband, the head of the family, and unless such presumption be rebutted in some way, as, for example, by evidence showing that the husband is insolvent, and that the duty of providing for the family devolves exclusively on the wife, she will not be held liable for the cost of such necessities. *Brown & Guy*, 5 L. N. 111, S. C. R. 1881.

47. But where the wife had purchased food and necessities for herself and family during the insolvency of the husband who had nothing, she was held to be liable and a judgment condemning her was confirmed in review. *Benard & Bruneau*, 5 L. N. 112, S. C. R. 1881.

48. Action against a married woman, separated as to property by judgment of the Court, from her husband to recover a balance of accounts for goods sold and delivered. Question as to whether the sale was to her on her husband. After the separation, an execution was issued against the husband at the suit of the wife and he signed a *nulla*

(1) The wife where separated either from bed and board or as to property only, acquires the uncontrolled administration of her property. She may dispose of or alienate her moveable property. She cannot alienate her immovables without the consent of her husband, or upon his refusal without being judicially authorized. 1318 C. C.

*bona*. The wife then carried on business herself and he acted as her attorney. The goods sued for were for the purposes of the business. *Held* that the action was properly brought in the name of the wife. *Rowan & Dubord*, 4 L. N. 172, S. C. 1881.

49. The property of a wife *séparée de biens* is not liable for taxes due by her husband. *Venner & Blanchet*, 8 Q. L. R. 288, S. C. R., 1882.

50. Action brought by the plaintiff against a married woman, separate as to property, who purchased a quantity of furniture from the Company, plaintiff. She did not pay for the furniture, and action for the price. Plea that she was not authorized to contract, and that the action cannot be maintained against her. Action dismissed. *Ontario Cabinet Co. & Washburne*, 6 L. N. 23, S. C., 1882.

51. A female defendant, described in a complaint as M. W., wife of T. D. is, in the absence of proof to the contrary, presumed to be in the power of her husband and will not be held responsible for keeping her tavern open after hours unless it appears that she is separate from her husband in bed and board. *Corporation of Quebec & Walsh*, 10 Q. L. R. 23, R. C., 1883.

#### VII. NULLITY OF.

52. Demand in nullity of marriage. The parties were alleged to have been catholics and to have been married by the pastor of the French Protestant Church on the production of a license and without publication of bans. It was also alleged that, while the husband was respectably connected, that he was of weak intellect and had been inveigled into the marriage by the defendant, who was a naturel child and whose mother was said to lead an immoral life. The defendant alleged that she was not catholic but protestant, and that the marriage had been celebrated openly and legally before witnesses.—*Held*, that the proper person to celebrate the marriage of the catholics was the *Curé* of the parties and that a license granted by the representative of the Civil Government could not dispense from the publication of bans, as required among catholics, and that in consequence the marriage, as celebrated in the present case, was null. *Laramée & Evans*, 25 L. C. J. 261 & 5 L. N. 57, S. C., 1881.

53. And *held* also that before pronouncing on the validity of such a marriage, the Court should refer the case to the ordinary of the diocese to pronounce the nullity of the marriage and its dissolution, if null, before deciding as to its effects. *Id.*

#### VIII. POWER OF WIFE TO SUE.

54. Action by the liquidator of the Mechanics' bank against a shareholder to recover the double liability. The shares were subscribed in the name of A. H. M. in the register, which was in the handwriting of the

defendant S. H. M. who subscribed for them in the name of his wife. *Per curiam*.—The defendant says he is not responsible for the amount and that the action should have been against his wife. It is admitted that there was community of property between husband and wife. Now, the question is: can the husband be held personally responsible when the shares were subscribed for in the name of his wife? There can be no doubt on this point: The wife cannot hold property in her own name. Any that she acquires must fall into the community. These shares are in the same position as though the defendant had acquired them in his own name. The question of insufficiency or want of authorization cannot come up here. The husband himself signed for her and that is sufficient. *McIntosh & May*, S. C. 1884.

#### IX. PROCEEDINGS WITH REGARD TO CHILDREN.

55. Petition by a husband against his wife for an order to permit him to see his child after judgment of separation, giving the custody of the child to the mother. *Held* that as the petition was not made in a cause pending that it must be dismissed. *Pillet & Delisle*, 7 L. N. 78, S. C. 1884.

#### X. PROMISE OF.

56. The plaintiff, a woman of upwards of fifty years of age, sued the defendant a man over seventy years for \$100, for breach of promise to marry her on or about the 12th July, 1881. The declaration averred as grounds of damage that she had announced her approaching marriage to her friends, that she had lost some ten days time in preparing for it and had spent some five dollars. The defendant's refusal was based on the advice of his physician who considered it would be unsafe for him to do so. *Held* that the mere promise did not give rise to damages unless damage was proved, and as the evidence was that the defendant had given the plaintiff more than the promise has cost her there was no action. *Chamberland & Parent*, 8 Q. L. R. 299 S. C. 1882.

#### XI. SÉPARATION DE BIENS.

57. Action *en séparation de biens* brought by the plaintiff against the defendant, as curator to the interdiction for insanity of her husband. The declaration, after setting out the marriage interdiction of the husband, and appointment of the defendant as curator, went on to allege that the plaintiff had no confidence in the defendant, that he was a person perfectly illiterate, that he was administering badly the property of the community; that he refused to allow her a sufficient sum out of it for the maintenance of herself and her children, and that without the benefit of a separation of property, her interests would be imperilled. *Held*, (*dubitante*) that the

action on such ground would not lie. *Paradis & Laflamme*, 8 Q. L. R. 307, S. C., 1878.

#### XII. SÉPARATION DE CORPS.

58. Action by husband, against his wife *en séparation de corps et de biens*, on the ground of adultery. The parties were in community and by his declaration the plaintiff prayed "*qu'elle soit déchue du droit d'exiger les dons et avantages qui lui ont été faits par son contrat de mariage susdit, et notamment de sa part dans la dite communauté*." *Held*, that an adulteress loses all the advantages granted to her by her husband, but not her part of the community which is regarded, not as a gift from her husband, but as representing what she contributed or earned or saved for the community. *L'Heureux & Boivin*, 7 Q. L. R. 220, S. C., 1881.

59. The fact of adultery, in an action for separation on that ground, may be inferred from circumstances that lead to it by fair inference as a necessary conclusion. So where it was proved that the wife, under an assumed name had occupied the stateroom with one B. during a voyage to Europe and had subsequently lived with B. as his housekeeper or guest, together with other facts not related, in any way, all pointing to a criminal relation, adultery was inferred without direct proof of the fact. *Lefebvre & Belle*, 5 L. N. 106, C. S., 1881.

60. That a husband, from indulgence in unnatural practices, renders himself impotent and incapable of fulfilling his marital duties, is not a legal cause of *séparation de corps*. *Dasylova & Plante*, 8 Q. L. R. 349, S. C., 1882.

61. The communication of venereal disease by the husband to the wife is sufficient ground for *séparation de corps et de biens*. *Brunet & Leroux*, 5 L. N. 41 & 27 L. C. J. 53, S. C. R., 1882.

62. In an action for separation from bed and board brought by the wife, the evidence went to show that the husband was addicted to liquor and when under its influence would use his wife very roughly. There were two or three instances of this rough treatment given by the witnesses for the plaintiff in which he had kicked her, thrown things at her and applied *grosses expressions* to her in the presence of strangers. Judgment granting separation confirmed in appeal. *Rhéaume & Massé*, 5 L. N. 298, Q. B., 1882.

63. An action *en séparation de corps* by a husband, based on the sole allegation of abandonment by the wife of the matrimonial domicile, is good in law. *Leriger & Pinsonnault*, 7 L. N. 311, S. C. R., 1883.

#### XIII. WITH DECREASED WIFE'S SISTER.

All laws prohibiting marriage between a man and the sister of a deceased wife are hereby repealed, both as to past and future marriages and as regards past marriages, as if such laws had never existed. Q. 45 Vict., Cap. 42, Sec. 1. This act shall not affect in any manner any case decided or pending before any

Court of Justice; nor shall it affect any rights actually acquired by the issue of the first marriage previous to the passing of this Act; nor shall this act affect any such marriage when either of the parties has, afterwards, during the life of the other, lawfully intermarried with any other person. Sec. 2.

## MARRIAGE CONTRACTS.

### I. COMMUNITY.

*Action by heirs for a share of.*

*Continued.*

*Does not exist between parties married abroad.*

*Exclusion of.*

*Opposition to seizure of property of.*

### II. DONATIONS BY HEIR FRAUDULENT.

### III. MADE IN A FOREIGN COUNTRY.

### IV. PAYMENTS BY WIFE.

### V. POWERS OF WIFE.

### VI. REGISTRATION OF.

### VII. TRANSFER BY WIFE ON BEHALF OF HUSBAND.

### I. COMMUNITY.

64. "*Action by heirs for a share of.*" In a petitory action for the recovery of the undivided half of a certain lot of land, the plaintiff alleged that a community of property existed between his father and his late mother; that after her death no inventory having been made by the father the said community of property was continued that during the continued community, the said father purchased the said lot No. 6, and afterwards, during the continuance of the said community, namely on the 30th of July, 1885, in his own name, and in his capacity as tutor to the plaintiff, transferred from that day, until the plaintiff should be of age, the usufruct and enjoyment of the said lot of land to the defendant. The deed of transfer as to the ownership of the land, of which the usufruct was so transferred, contained the following declaration "*appartenant le dit lot de terre, moitié au dit cédant, par droit de communauté.*" Declaration then alleged that although, since the plaintiff attained the age of majority, he had frequently requested defendant to deliver possession of the one half of the said lot of land, he had always refused to do so, and the conclusion of the declaration was that the plaintiff be declared proprietor of one half of the said lot of land "*et à ce que le dit défendeur soit condamné à déguerpir de la moitié du dit terrain et à en mettre le demandeur en possession de la moitié après division faite, sous quinze jours du jugement à intervenir.*" Held reversing the judgment of the Court below, that as the plaintiff had not proved nor ever alleged that the said continued community, of which the said father was the head, had been

dissolved, nor that the said plaintiff had exercised the option which the law gives him of taking a share in the said continued community instead of taking a share in the said community, of property as it existed between the said father and the mother of the plaintiff, that therefore it does not appear that the plaintiff now has or ever had any actual or vested interest in the undivided half lot of land claimed in and by the present action and consequently that the present action which is a petitory action, cannot be maintained. *Bourrassa & Lacerte.* 10 Q. L. R. 118, S. C. R., 1884.

65. *Continued.*—In an action against the second husband of the plaintiff's mother, after the death of the latter, for a division of the property of the continued community.—Held that in consequence of the failure of the mother to make an inventory of the community of property which had existed between her and their father, who died on the 14th June, 1832, intestate, leaving the plaintiffs then minors as his heirs at law, and her remarriage with defendant without a contract of marriage on the 19th March, 1840, a tripartite community of property was formed between defendant, the mother, and the plaintiffs. *Almour vs. Ramsay.* 26. L. C. J. 167, S. C., 1881.

66. And the inventory made by defendant after the death of his wife, although made ostensibly of the community between him and his wife was a good and legal inventory of the tripartite community notwithstanding there was not really any property belonging to the first community. *Ibid.*

67. And the fact that the plaintiffs had not, up to and at the time of the making of the inventory made any demand of continuation of community, did not prevent their making such demand by the action. *Ibid.*

68. *Does not exist between parties married abroad.* The plaintiff alleged a community of property to have existed between his father and mother, married in 1827, and claimed community rights as heir at law of his deceased mother and of his deceased sisters. The community was denied by his father the defendant. *Per curiam.*—The question to decide is where the domicile of the defendant *animo* and *facto* was when he married in 1872. This is purely a question of evidence. The defendant came here as a single man in 1825, according to the evidence and witnesses, in order to look after the interests of his uncle who was a resident of the State of New York, and had a claim against parties in business in Montreal. The parties had got into pecuniary embarrassments. The defendant at the time was domiciled in the State of New York, and came here for a temporary purpose. He married a lady belonging to Troy, N. Y. in 1827. And brought her here from Troy, the place of marriage, and continued to live here until 1834, when he returned to the State of New-York, and remained there until 1839, then he returned to Montreal and made this

city his permanent abode. It is impossible for me to say on the evidence before me that the defendant when he married had the intention of settling in Lower Canada. As it is not proved that the law of community existed in the State of New York there is no community established. *Converse & Converse*, 5, L. N. 69. S. C., 1882.

69. *Exclusion of*.—The plaintiff having obtained judgment against the defendants, seized the household furniture in his possession. His wife, describing herself as separate as to property from the defendant filed an opposition, claiming the thing seized as her own. In virtue of a donation from her mother during her marriage, and of purchases made by her at different times during the same period. She set up her marriage contract which showed, not separation of property, but exclusion of community between her and the defendant, her husband. She filed also the deed of donation and a number of accounts made and receipted in her own name. *Held* that where there is exclusion of community, her husband has only the usufruct of the moveable property of his wife, the ownership of which remains with her and is consequently not liable for her husband's debts. *Hôpital Général vs. Gingras*. 10 Q. L. R. 230. S. C. 1884.

70. *Opposition to seizure of property of*.—Where a number of lots of land were seized as belonging to the defendant but which really belonged to the community between defendant and his late wife, and one of the sons opposed setting up his title to an undivided share and asking that the seizure be set aside. *Held* that he could only ask that the seizure be suspended until after a partage. *Hôpital Général vs. Gingras*. 10 Q. L. R. 136. S. C. R. 1884.

## II. DONATIONS BY HELD FRAUDULENT.

71. In May, 1878, plaintiff sold to defendant certain effects, including a Brussels, carpet, costing \$93, and an oil cloth \$26. On the 9th November of same year, an action was instituted by the plaintiff against the defendant for \$114, balance due thereon, and judgment rendered for the amount, 12th December following. To a seizure of defendant's goods and chattels, including the carpet and oil cloth, the wife of the defendant filed an opposition based on the marriage contract, by which the goods and effects in question were conveyed to her as a donation. The marriage contract was entered into on the 18th of November 1876, or just nine days after the action. Plaintiff contested the opposition on the ground that at the date of the marriage contract, the defendant was utterly insolvent to the knowledge of the opposant, and that the goods and chattels so seized were by the defendant given to the opposant for the purpose of defrauding the creditors of the defendant, more particularly the plaintiff from whom the defendant had purchased the said

carpet and oil cloth, forming part of the goods and chattels so given by the defendant to his wife, now seized at the suit of the plaintiff. Seventeen days after the date of the marriage contract, defendant made an assignment of his estate under the Insolvent Act of 1875. There was no evidence of bad faith on the part of the wife, the opposant.—*Held* that under Art. 1034 C. C. (1) the donation must be presumed to be fraudulent as regards the defendant.—And that although the wife was in good faith a donation under such circumstances is a gratuitous contract as much in favor of the donor as of the donee, and must be set aside. Opposition dismissed. *Behan & Erickson*, 7 Q. L. R. 295, S. C. 1881, & *Holliday & Considine*, S. C. 1884.

## III. MADE IN FOREIGN COUNTRY.

72. Reference by the Bank of Montreal, petitioner, under the 25th Sec. of the Banking Act of 1871, to ascertain which of the two respondents was entitled to certain shares of stock in the bank, under the following circumstances: H., one of respondents, was executor of the will of the late M. R. M., wife of the late J. M., both deceased. By their marriage contract which was entered into in the Red River settlement in 1859, the wife's property was to remain her separate estate under her personal control, and to go to her children after her death, and for this purpose she created a trust of the principal, consisting of the shares in question in such manner that her surviving children should be entitled to it in equal shares at her death, as their own absolute property. By her will she bequeathed all her estate to her husband and her children, share and share alike, and made H. executor. S., the other respondent was trustee under the marriage contract. Question whether the will or the marriage contract should prevail.—*Held* that in the absence of proof to the contrary, the Court would assume the law of the place where the marriage contract was made to be the same as the law of this province and by Art. 1823 C. C. (1) the donation by the marriage contract could not be revoked and must take precedence of the provisions of the will. *Bank of Montreal & Hopkins*, 5 L. N. 162, S. C. 1882.

## IV. PAYMENTS BY WIFE.

73. By a contract of marriage the intending husband made a donation to his intended

(1) Sequestration or deposit may take place by judicial authority. Of immoveable property seized under process of attachment, or taken in execution of a judgment. Of money or other things tendered and deposited by a debtor in a suit pending, the Court upon application by the interested party may, according to circumstances, order a sequestration of a thing, moveable or immoveable, concerning the property or possession of which two or more persons are in litigation. 1823 C. C.



wife of the usufruit of certain immoveable property. The donation was made on the condition that she should pay to his vendors the amount of a mortgage representing a portion of the price of the property, and if the intending husband died without paying another mortgage of \$2,000 created by him upon the said property and his succession was insufficient to pay it. The wife was also to pay whatever balance might be required, but she should be entitled to be reimbursed by his heirs, upon the expiration of the usufruit for all sums paid. The wife took possession of the property after her marriage, and borrowed money thereon with the authority of her husband, with which the mortgage above mentioned was paid off. *Held*, that the wife was personally liable for the amount so borrowed, although in the deed of obligation and mortgage given therefor she and her husband and the curator to the substitution created under the marriage contract, were all described as the "party of the first part," and the money was acknowledge to have been received and was promised to be repaid by the "party of the first part," and the mortgage securing payment was by the same party, and although the husband was described as acting in *his own name*, and to authorize his wife. *Francis & Bousquet*, 6 L. N. 122 & 27 L. C. J. 115, S. C. R. 1883.

#### V. POWERS OF WIFE.

74. Where a woman is married under a contract excluding community, she may borrow money with the authorization of her husband and be liable for the repayment of it, and such obligation is not forbidden by the term of Art. 1301 C. C. (1) *Ross & Soci   de Construction de Quebec*, 12 R. L. 130, Q. B. 1882.

#### VI. REGISTRATION OF.

75. The defendant, a merchant, by his contract of marriage passed in September, 1877, gave to his wife, who was thereby constituted separate as to property, the sum of \$4000. The wife now came in by opposition, and was collocated on the estate of her husband for that amount, which collocation was contested by certain of the creditors of her husband on the ground, that the marriage contract in question was not registered within three months of its date, as provided by the 126th section of the Insolvent Act, 1875. *Held* that the provision in question applied only to estates which had been placed in insolvency, and which were being wound up under the Insolvent Act 1875, while the similar provisions in previous insolvent acts could not be made to extend to marriage contracts passed after

they had ceased to be in force. *Joseph & Fortin*, 7 Q. L. R. 87, S. C. 1881.

76. And the Insolvent Act 1875, having been repealed prior to the insolvency of the husband the rights of the wife were not affected by it, and must be regulated according to the provisions of the Civil Code. *Id.*

77. The opposant by her opposition for judgment set up that, by her marriage contract, it was stipulated by her husband, in his life time seigneur of the fief and seigneurie of Lache-naie that in consideration that there should be no community of property between them, and to be in place of all dower and other matrimonial rights that she should have an abnormal life rent of £180 currency, payable £45 every three months, counting from the day of his death, and in order to guarantee the payment of the same, hypothecated in her favor the fief and seigneurie of Lache-naie. The immoveables sold formed part of the property of the said seignior, and in the report of distribution she was collocated for \$2,508.78 arrears of rent, and \$2,349.57 to count on the capital. Contestant, a subsequent hypothecary creditor, contested on the ground that the marriage contract should have been registered during the life-time of the husband, and that prior to the registration of said deed all seigniorial rights in the said seignior had been abolished. *Held*, that the marriage contract did not require to be registered during the life-time of the husband to preserve her rights as therein stipulated, and contestation dismissed. *Chisholm v. Paus  *, 26 L. C. J. 162, S. C., 1882.

#### VII. TRANSFER BY WIFE ON BEHALF OF HUSBAND.

78. Question as to the validity of a deed of transfer made by a wife on behalf of her husband, by which she transferred to the defendant with promise of warranty "all her right " title and interest, as one of the legatees and " legal representatives of her father, the late " D., deceased, to the sum of \$3,000 part and " parcel of the amount coming to her under " and by virtue of a certain sale by authority " of justice, of certain real estate, the property " of the estate of her late father, with all " interest to accrue thereon." The consideration of the deed was stated to be the like sum paid in cash at the execution of the deed. The declaration set up that no money was really paid at the execution of the deed, that she had never received any consideration for the transfer, that she never was indebted to defendant, and that said deed was made as security *pro tanto* of the indebtedness of her husband to defendant under the importunities and influence of her husband acting in connivance with defendant and said transfer was therefore absolutely null and the plaintiff was entitled to have return of all the moneys received by defendant under the same and interest. *Per curiam*.—The plaintiff truly says that she

(1) A wife cannot bind herself either with or for her husband, otherwise than as being common as to property, any such obligation contracted by her in any other quality is void and of no effect. 1301 C. C.

made the transfer in the first instance as security for her husband's obligations, but the question here is not the enforcement of her obligation, but whether having made a payment which inured to her husband's benefit she can have the payment cancelled. I agree with Mr. Justice Jetté, that the article of the Code 1301 C. C. (1) does not go that length. She has chosen to give over to her husband's creditor a valuable security which has discharged her husband *pro tanto*. If she is ever called upon to guarantee the transfer under the warranty clause, the article may be invoked for her benefit, but she is not now called upon to fulfil any obligation violating that article. Action dismissed. *Gorrie & O'Gilvie*, 4 L. N. 228 et 5 L. N. 261, S. C. R., S. C., 1881.

## MARRIED WOMEN.

### I. DESCRIPTION OF IN ACTION BY.

### II. PENALTY FOR NON REGISTRATION WHEN IN TRADE.

### I. DESCRIPTION OF IN ACTION BY, *see* PROCEDURE DESCRIPTION.

### II. PENALTY FOR NON REGISTRATION WHEN IN TRADE.

79. The penalty enacted by Art. 981 C.C.P., with respect to married women, carrying on trade without delivering to the prothonotary and registrar, the declaration therein mentioned, is not intended to apply to cases where a married woman is carrying on a petty business, with a stock of the value of a few dollars only. *Ross & Prud'homme*, 6 L. N. 37, S. C. R., 1883.

## MASTER AND SERVANT.

### I. DESERTION OF SERVANT.

### II. DISMISSAL OF SERVANT.

### III. JOURNALIERS.

### IV. LIABILITY OF MASTER.

*For injury to servant.*

### V. LIABILITY OF SERVANT.

### VI. RIGHTS OF APPRENTICESHIP.

### VII. RIGHTS OF WORKMEN.

### VIII. SERVICES TO RELATIVE DECEASED.

### I. DESERTION OF SERVANT.

80. Where a commercial traveller, engaged by the year, quits the service of his employer without legal cause and against the will of

his employer and without previous legal notice, he forfeits all claims to wages accrued to the time of his quitting the service and compensation will lie of the damage suffered by the master. *Nixon & Darling*, 27 L. C. J. 78. S. C., 1883.

### II. DISMISSAL OF SERVANT.

81. Case of *Dugdale & City of Montreal*. (II. Dig. 504, 108 & 505-109,) reported in *extenso*. 25 L. C. J. 149. Q. B., 1880.

82. Appellant alleged that on the 20th December, 1876, he had entered into partnership with the respondent as manufacturers of iron, in the District of Three Rivers, and that the partners had put in certain tools and machinery to that purpose. For it was agreed by the deed of partnership that the appellant should have the management of the machinery and working of the shop. That the partnership was not to be dissolved by the death of one of the partners but should continue to the end of five years. In 1879, however, the respondent bought out the appellant, agreeing to pay him the sum of \$2,800, for his share and to continue him as manager of the shop for the balance of the term and for the same amount per annum as salary which the partners had agreed to draw from the proceeds of the partnership for their private use. That this agreement was entered into by notarial deed, the 17th of January, 1880, at which time the partnership was dissolved, but on the 7th of August of the same year the respondent, without just cause or reason, dismissed the appellant from his employment, and replaced him by another person and he asked for \$3,000 damages. The respondent on his part alleged and proved that the appellant, without his knowledge and consent, had entered into partnership with another person in a rival business. *Held*, that the respondent for these reasons was justified in dismissing the appellant, from his service. *McDougall & McDougall*. 11 R. L., 203. Q. B., 1881.

83. In another case.—*Held* that a merchant was justified in dismissing a clerk who had entered into his employment without representing that he was dismissed from his last place on a charge of defalcation. *Jarret & Morgan*. 12 R. L., 58, S. C., 1881.

84. *Per Curiam*.—The plaintiff, who was a clerk in the defendant's employ, brings an action for the recovery of salary and damages for dismissal without cause. The defendant pleads that the plaintiff was engaged by the month and that the engagement was terminated with the plaintiff's full consent. He tenders with his plea the sum of \$32 as the amount due and asks for the dismissal of the plaintiff's action quoad the surplus. From the evidence it appears that on arriving at the defendant's store one morning the plaintiff and his employer had some words about some work that had been left undone, and the latter remarked if he was not content.

(1) A wife cannot bind herself either with or for her husband otherwise than as being common as to property, any such obligation contracted by her in any other quality is void and of no effect. 1301 C. C.

he could go elsewhere, to which in a moment of bad humor the plaintiff assented. Under these circumstances the defendant's plea is made out, and the tender of \$32 is declared valid and the plaintiff's action is dismissed as to the surplus with costs. *Peltier & Moisan*. S. C., 1884.

### III. JOURNALIERS.

85. In an action against an employee.—*Held* that the defendant, whose occupation was to paint or engrave flowers or patterns on wall paper, was not a workman within the meaning of Que. 44-45 Vic. Cap. 18, which exempts from seizure one-half of a workman's wages. *Brown & Gordon*, 7 L. N. 354, C. C. 1884.

### IV. LIABILITY OF MASTER

86. Where action of damages was brought against a master for an accident caused by one of his employees allowing a piece of metal to fall from a roof on to plaintiff's head. *Held* that he was liable. *Vandal & Prowse*. 4 L. N. 2, S. C. 1880.

87. Plaintiff was employed by the defendant in his bakery, and after his duties were over, proceeded with the other workmen to leave the defendant's premises and in doing so had to traverse the defendant's yard in which was a dog of the defendant at large, which was known to be ferocious and disposed to bite. The other workmen before leaving the bakery warned the plaintiff of the character of the dog; and that he had better not leave until he was chained up. The plaintiff left the bakery and while traversing the yard was bitten by the dog. Action of damages by plaintiff dismissed in court of first instance on the ground that the plaintiff was guilty of negligence in traversing the yard after being warned; but in Review.—*Held* that as the plaintiff was engaged in the business of his master and there was no provocation on his part of the dog, that he was entitled to \$75 damages and costs in an action over \$100. *Auprix vs. Lafleur*, 25 L. C. J. 251, S. C. R. 1880.

88. Action by the widow of the late M. S., claiming damages from his employers by reason of his death by accident. The plea admitted that S. was in the employ of the defendants on the 28th of February last, the date of the accident. His ordinary occupation was that of carter, but it was understood that he was to perform such other work about the works of construction and repair then going on, as might be required. It was alleged that the defendants used all proper precaution, but that in course of construction a chain used to hoist sticks of timber gave way from unforeseen causes, and the stick of timber fell upon S., and inflicted such serious injuries that he died shortly afterwards. That this was a fortuitous event, for which the defendants were not responsible. Further that S. was negligent on his part in passing under-

neath the stick of timber. The Court considered that the plaintiff was entitled to recover, and the damages were estimated at \$1,000, for which judgment was rendered, with costs. *Filiatrault vs. Ogilvie et al.* S. C. 1881.

89. Le maître est responsable à son employé du dommage qui lui advient par suite d'une installation sérieuse des machines ou appareils de son établissement et la connaissance que l'employé aurait pu avoir du danger n'exonère pas le maître. *Cossette & Leduc*. 6 L. N., 181 S. C. R. 1883.

90. Et lorsque l'employé a fait ce qu'aurait fait la plupart des hommes et n'est pas en faute il n'y a pas lieu à réduire son indemnité pour négligence contributive. *Ib.*

91. On the 21st July, 1881, the husband of plaintiff was in the employment of defendant, as second mate aboard the Steamer *Chambly*. He was a good husband, a good servant, and was liked by all, including the officers of the Company. On the date of the accident, the *Chambly* was met by a tug boat, called the *John Brown*, and the two vessels came together for the purpose of transferring some boxes unto the *Chambly*. This was in a part of the stream where the current was very swift, the boats were lashed together only at one end and were consequently being carried apart by the current. As the deceased was in the act of assisting to carrying a box from one boat to the other, the gangway gave way in consequence of the separation of the boats, the box fell into the river and dragged the husband of the plaintiff after. The Captain started the boat without being aware of the accident, but being immediately told of it, stop and backed up, but not in time to save the deceased, who was drowned. *Jugé*.—Qu'en droit, le maître ou commettant est tenu de veiller à la sûreté de ses employés ou préposés, est que si un accident arrive à un employé dans l'exécution de ses devoirs, le maître en est responsable, à moins qu'il ne soit prouvé que dans l'état actuel de la science, il était impossible de le prévenir (1). *St. Jean & R. Ontario Navigation Co.* 11 R. L. 381, S. C. 1882.

92. Que lorsqu'il y a imprudence, ou faute de la part de la victime de l'accident, cette faute ne peut soustraire le maître ou commettant à la responsabilité qu'il encourt par la loi; mais que cette faute de la victime doit être prise en considération lorsqu'il s'agit d'établir le montant des dommages. *Ib.*

93. Que le maître ou commettant est responsable, vis-à-vis de ses ouvriers ou préposés, du dommage causé par l'un d'eux à l'autre, dans l'exécution du travail commun. *Ib.*

94. Que l'action naissant de la responsabilité civile peut être intentée directement contre la personne civilement responsable, sans qu'on soit tenu de mettre en cause les auteurs du fait dommageable. *Ib.*

(1) Reversed in appeal, 28 L. C. J. 91, Q. B. 1883.

95. Plaintiff was in the employ of the defendant, biscuit manufacturer and while engaged in such employment, his hand was caught between two rollers, belonging to the machinery used for making biscuits, by which two of his fingers were permanently injured.—*Held* that a workman who is injured in the course of an employment which becomes dangerous only by carelessness and want of proper attention, has no right to damages from his master, especially if he is acquainted with the working of the machinery, and could be injured only by his own imprudence. *Sarault & Vau*, 11 R. L. 217, S. C. 1881.

#### V. LIABILITY OF SERVANTS.

96. Where an employer had published in his factory a rule that any employee, intending to leave, must give a certain notice, this notice is obligatory, and an action under cap. 20 of the city By-laws will lie for desertion, even where the engagement is for a shorter period than one month, and he leaves at the expiration of his term. *City of Montreal & Durand*, 5 L. N. 363, R. C. 1882.

#### VI. RIGHTS OF APPRENTICESHIP.

97. A contract of apprenticeship will be annulled if it appear that the apprentice has not a fair opportunity of acquiring proficiency in the art which the master engaged to teach him. *Baker & Lebeau*, 7 L. N. 299, Q. B. 1884.

#### VII. RIGHTS OF WORKMEN.

98. Where workmen were engaged by contractors for the construction of railway, but the company paid the men, their wages, &c.—*Held* that they were justified in believing the company to be the principals and in looking to them for their wages. *Lapointe & Canadian Pacific Railway Co.*, 7 L. N. 29, C. C. 1883.

#### VIII. SERVICES TO RELATIVE DECEASED.

99. Action for services as housekeeper of a person deceased, with whom plaintiff had resided as a friend and relative. She left the house of deceased in December, 1878, and deceased died in July, 1879. Action brought on 4th September, 1880. Plaintiff admitted that she had never stipulated any price for her services in the household, nor any agreement that she was to have wages, and she had never demanded any.—*Held* that the demand was prescribed by one year, that it was for an amount over \$50, and there was no writing, and that in any case as between friends and relatives no hiring can be presumed. *Leonard & Jobin*, 4 L. N. 55, S. C. 1881.

MEASURES—See WEIGHTS AND MEASURES.

### MEDICINE.

#### I. PENALTY FOR PRACTICE OF WITHOUT LICENCE.

100. Action under the Statute of the Province, 42 & 43 Vict. C. 37, Sec. 28, imposing a penalty of not less than \$25, nor more than \$100, upon any person who, without being entitled to registration under the provisions of the act, shall be convicted of having practised medicine, surgery, or midwifery in the Province of Quebec, for hire, gain, or hope of reward, and the particular facts alleged against the defendant are that he attended three persons who were named, one of them at St. Constant, and the two others at Laprairie, and received by way of fee \$2 in each of two of the cases, and \$1.25 in the other. Conclusion for one penalty only. *Per curiam*.—The defendant is very old and very poor, and appears to be what is now known as a "crank." The judgment is for \$25 for the case proved, viz: that of Madlle Gervais; the Court reserving to pronounce also imprisonment, if it should be asked. *College of Physicians and Surgeons of Province of Quebec & Garon*, 6 L. N. 61, S. C. 1882.

### MEDICINE AND SURGERY.

#### I. ACT RESPECTING, see Q. 45 VICT., CAP. 22.

### MEETINGS.

#### I. OF MUNICIPAL COUNCILS, see MUNICIPAL CORPORATIONS.

### MEMORANDUM IN WRITING.

#### I. WHEN NECESSARY.

101. *Held*, that an alleged agreement which is to destroy the legal effect of the order of the endorsement, according to the law merchant must be proved according to the rules laid down in 1234 and 1235 C. C., as to the necessity of a memorandum in writing. *Whitfield & Macdonald*, 2 Q. B. R. 157 & 26 L. C. J. 69, Q. B., 1881, & 27 L. C. J. 165, P. C., 1883.

### MERCHANT SHIPPING.

#### I. ACT CONCERNING C. 45 VIC., p. cxxxix; C. 46 VIC., p. cxi.

#### II. ACTION FOR SEAMAN'S WAGES.

#### III. ADVANCE NOTES TO SEAMEN.

#### IV. CERTIFICATES TO MASTERS AND MATES OF VESSELS, C. 46 VICT., CAP. 28; C. 47 VICT., CAP. 19.

V. FEES & EXPENSES, C. 45 VICT., p. OXLI.  
 VI. GRAIN CARGOES, C. 45 VICT., p. OXLIII.  
 VII. ILL TREATMENT OF SAILORS.

VIII. JURISDICTION IN CASES OF.

IX. JURISDICTION OF JUDGE OF SESSIONS UNDER.

X. LIABILITY OF.

*For necessities.*

XI. PILOTS.

XII. PILOTAGE ACT AMENDED C. 45 VICT., CAP. 32.

XIII. PORT WARDENS ACTS, C. 45 VICT., CAPS. 45, 46.

XIV. RIGHTS OF MORTGAGEE TO FREIGHT EARNED.

XV. SALE OF VESSEL.

XVI. SALVAGE.

XVII. SEAMEN'S ACT AMENDED, C. 45 VICT., CAPS. 33 & 34.

XVIII. SEAMEN'S WAGES, C. 45 VICT., p. CXXIV.

XIX. SEIZURE OF VESSELS.

XX. SHIPPING OF SEAMEN.

## II. ACTION FOR SEAMAN'S WAGES.

102. In a suit for seaman's wages, the protest of a Foreign Consul to the jurisdiction overruled. This was a suit for seaman's wages and came before the Court upon the intervention of the Consul for Sweden and Norway, in the form of a protest to the jurisdiction, the *Monark* being a foreign vessel and the case being one which, it was represented, this Court in its discretion ought not to determine. *Monark The in re*, 9 Q. L. R. 211, V. A. C., 1883.

103. The 189th section of the Merchant Shipping, Act 1854, applies to foreign as well as British vessels, and a Vice Admiralty Court cannot entertain a suit for seamen's wages, the demand being below £50 stg., unless upon a reference as prescribed by that Act. *Ib.*, 9 Q. L. R. 214, V. A. C., 1883.

## III. ADVANCE NOTES TO SEAMEN.

104. To an action on an advance note to a seaman, under 36 Vict., Cap. 129, Sec. 30, payable five days after the sailing of the ship with the seaman on board, the action being by a third party to whom the seaman had endorsed it, it was pleaded that the note was not transferable by endorsement, and moreover that the seaman had deserted, and there was no consideration. There was proof that the seaman with some of his mates had refused to proceed in the vessel when it arrived at Gaspé as being unseaworthy six days after sailing. *Held*, that the note was negotiable under the terms of Art. 1573 C. C., (1) but did not carry the privileges of a

note in the hands of a third party so as to be free of objections, and the desertion of the seaman having left it without consideration, it was void and no action would lie on it. *Duchaine & Magloire*, 8 Q. L. R. 295, C. C., 1882.

## VII. ILL TREATMENT OF SAILORS.

105. Complainant was a sailor on board the *Alpheus Marshall*, a British registered ship. His engagement was made at New-York, 6th September, 1883, for 3 years at \$14 a month. After a long voyage to Yokohama, Japan, the ship came into port of Montreal. Here he laid an information against the captain accusing him of cruelty, and claiming to be discharged from his engagement and to be paid a certain sum for wages. — *Held* that the action of a captain in putting his hands on short allowance during a voyage of several months, when he had several opportunities to supply his vessel with the necessary provisions, constitutes a case of ill treatment sufficient to justify a sailor in leaving his ship and in suing for his wages under the 190th section of the Merchant's Shipping Act, (1854). *Tupper & McFadden*, 7 L. N. 369, Po. Ct. 1884.

106. That the captain was not justified in inflicting severe punishment on a sailor because, while the latter was weak on account of not having sufficient food to eat, he refused to work. *Ib.*

107. That the refusal or neglect of the captain to provide a sailor with necessary food, and his incarceration in the ship's cells, where he was put into irons, and afterwards triced up by the thumbs, justify reasonable apprehension of danger to his life if he were to remain on board. *Ib.*

## VIII. JURISDICTION IN CASES OF

108. Action for wages as sailor on board the barque *Leda*, navigating the interior waters of Canada. Plea want of jurisdiction in the judge of Sessions on the ground that the barque was not registered. *Held* that notwithstanding the defendant had a license from the Harbor Commissioners, the action must be dismissed, as there was no proof that the barque was registered according to the provisions of 36 Vic. Cap. 129, Secs 52 & 54. (1). *Tremblay & Lamothe*, 7 Q. L. R. 294, S. P. 1881.

nor to transfers of shares in the capital stock of incorporated companies which are regulated by the respective acts of incorporation or the by-laws of such companies. Notes for the delivery of grain or other things, or for the payment of money and payable to order or to bearer, may be transferred by endorsement or delivery without notice, whether they are payable absolutely or subject to a condition. 1573 C. C.

(1) The two last preceding articles do not apply to bills, notes or bank checks payable to order or to bearer, no signification of the transfer of them being necessary, nor to debentures for the payment of money

(1). Any seaman or apprentice belonging to any ship registered in either of the said Provinces, or any person duly authorized on his behalf may sue in

## IX. JURISDICTION OF JUDGE OF SESSIONS UNDER

109. Appeal from a judgment refusing a writ of prohibition to restrain the judge of sessions of the peace at Quebec from executing a conviction by which he had condemned the appellant to be confined for five years in the provincial penitentiary for having on the 9th of Sept. 1880, gone on board the ship *Cavalier*, armed, without the permission and consent of the master. The prohibition was asked for on the ground that the "Seaman's Act, 1873" Sec. 86 under which the conviction was had, conferred no jurisdiction upon the judge of sessions to try the case and moreover, the conviction was had upon summons in the absence of the defendant and the summons did not aver in the terms of the Act, that the ship in question was a merchant ship. *Held* (1) dismissing the demand for prohibition on all these grounds, that the Judge of Sessions had summary jurisdiction to convict under the act in question. *Clark & Chauveau*, 8 Q. L. R., 98, Q. B., 1882.

110. And, moreover, there was no appeal from a judgment dismissing a demand for prohibition. *Id.*

## X. LIABILITY OF.

111. *For necessities*.—Action for necessities brought by the promoter, a shipliner and carpenter of Montreal. The "Glendevon" came to Montreal with a cargo of coal; she was to take a cargo of wheat on her return voyage and the promoter was employed by the master to line her so as to undertake this voyage. He did the work and brought the action for the price of it, \$666.15.—*Held* that such lining comes under the terms "necessaries" in the Imperial Act, 26 Vic. c. 24, s. 10, § 10. *Glendevon in re*, 10 Q. L. R. 295, V. A. C. 1884.

## XI. PILOTS.

112. A pilot who has been dismissed without reason before the time of his engagement has expired, has a right to recover from the Captain the total amount of his wages up to the time of the engagement. *Lafrance & Jackson*, 12 R. L. 21, S. C. 1881.

## XIV. RIGHT OF MORTGAGEE TO FREIGHT EARNED.

113. Where a mortgage on a schooner was a summary manner before any judge of the Sessions of the Peace, any judge of a County Court, Stipendiary Magistrate, Police Magistrate or any two Justices of the Peace acting in or near the place where the service has terminated or at which the seaman or apprentice has been discharged or at which any master or owner or other person upon whom the claim is made is or resides for any suit of wages due to such seaman or apprentice not exceeding \$200, &c.

(1) *Dorion, C. J., and Ramsay, J., dissentientibus. Vide 5 L. N. 74 and 85.*

granted to one partner individually for the benefit of the firm, and by him transferred to the other partner, and the firm had possession of the vessel, an action by the firm for the freight earned was held to be properly brought. *Lord & Bernier*, 4 L. N. 182, S. C. 1881.

## XV. SALE OF VESSEL.

114. The sale of a vessel by deed *sous seing privé* not registered will transfer the property to the purchaser, even as against third persons. *Michau & Marcotte*, 9 Q. L. R. 330, Q. B. 1870.

## XVI. SALVAGE.

115. Where the Captain of a steamship carrying passengers and a valuable cargo from Liverpool to Montreal, had lost her screw and had been six days under sail and was in the Gulf of St. Lawrence near a dangerous coast, entered into an agreement to pay £800 stg. for towage in Gaspé.—*Held*, confirming the Court below (II Dig. 120-97), that it was reasonable and might be enforced. *Stewart & Brevis*, 26 L. C. J. 14, & 4 L. N. 203, & 1 Q. B. R. 319, Q. B. 1881.

## XVIII. SEAMEN'S WAGES.

116. Action by three seamen of an American vessel for wages. The Consul of the United States addressed a protest to the Court, requesting that the matter in dispute, should be left to be decided by the United States Consular Authorities, and it is this matter which is now to be decided. The seamen were engaged at Manila, in the Philippine Island, and within the Spanish Dominions. Their contract was made in the Spanish language and contains a stipulation that they should be sent back to their home, in Manila after the termination of the voyage for which they have engaged.—*Held* that though the Court should not, as a general rule, interfere in disputes respecting the wages claimed by seamen of foreign vessels during the voyage, that it should have jurisdiction and should exercise it where there appeared to be just cause for doing so. *Mary Russell, in re*, 10 Q. L. R. 265, V. A. C. 1884.

## XIX. SEIZURE OF VESSELS.

117. The plaintiff having obtained judgment against the defendants, seized, as belonging to G. L. one of them, a yacht called the *Petrel*. The opposant filed opposition claiming to be the registered owner of the vessel and produced a registered certificate to that effect dated 9 December, 1882. The plaintiff contested the opposition alleging fraud and collusion between defendant then insolvent and the opposant. He set up that the vessel belonged to the defendant, and had only been registered in the name of the opposant for the purpose of putting it out of the reach

of defendant's creditors. *Held*, that the seizure for an ordinary debt due by a person, other than the registered proprietor of a vessel is null, and that even proof of fraudulent sale, prior to the registration is not sufficient to give legitimacy to the seizure made on behalf of a creditor of the vendor. *Darveau & Cyprien*, 10 Q. L. R. 348, S. C. 1884.

#### XX. SHIPPING OF SEAMEN.

118. Suit by a seamen of the *Red Jacket*, a ship of 2006 tons, to test the validity of articles signed by him for a voyage from London to Quebec, and back to the port of London, the duration of the voyage not being stated. It was commenced before the Judge of Sessions of Quebec, and was by him referred under the 189th article of the merchants shipping Act, to the Vice Admiralty Court for decision. The suit treated the articles as null and claimed a balance of wages as in a voyage from London to Quebec. The articles were pleaded as an existing agreement and under which, if valid, the promoter would be bound to carry out his engagement and return to London. The promoter relied on the 149th section of the Merchants' Shipping Act 1854 and the Act of 1873, under the first of which the duration of the voyage must be stated on pain of nullity, and under the second, the maximum period of the voyage and the places or parts of the world, if any, to which the voyage is not to extend. *Held*, that as the intention of the Legislature evidently was to give the mariner a fair intimation of the nature of the services and of their length, the description from London to Quebec and back to the port of London was sufficient. *Red Jacket, in re*, 8 Q. L. R. 205, V. A. C. 1882.

### MILITIA & DEFENSE.

I. ACTS RESPECTING See C. 44 VIC. CAP. 19, C. 45, VIC. CAP. 10, C. 46 VIC. CAP. 11, C. 48-49 VIC. CAP. 72.

#### MILITIA LAW.

- I. APPLICATION OF IMPERIAL ACT.
- II. OFFICER NOT PERSONALLY LIABLE FOR PAY OF MEN.
- III. RIGHTS AND DUTIES OF VOLUNTEERS.

##### I. APPLICATION OF IMPERIAL ACT.

119. In a prosecution before the Judge of Sessions of the peace brought under the 153rd Section of the Imperial Army Act, 1881, for enticing soldiers to desert.—*Held*, that such Act has no application in Canada with respect to persons not connected with the active militia *Holmes & Temple*, 8 Q. L. R. 351, S.P. 1882.

##### II. OFFICER NOT PERSONALLY LIABLE FOR PAY OF MEN.

120. The plaintiff, a volunteer in defendant's Company, was allowed by the Government, the sum of \$6 for his annual drill. After the receipt of the money from the Government as set forth in the pay roll, the defendant notified the plaintiff to come to his office and receive his pay. The plaintiff refused and sued the defendant, alleging that the defendant had promised to pay him, but had kept the money. The point in the pleadings upon which the judgment turned, is covered by the *considerants* of the judgement. *Held* that the sum of money sought to be recovered in and by his suit is a sum of money held by the defendant as an officer of militia for payment of militia service, and in respect of his district of which he is amenable to militia authority and that he is not personally debtor thereof to the plaintiff, in such wise as to entitle the plaintiff to sue him. *Williams & Seale*. 7 L. N., 224, C. C., 1878.

##### III. RIGHTS & DUTIES OF VOLUNTEERS.

121. In an action for slander by a soldier of the active militia of Canada, against his commanding officer.—*Held* that the question as to whether an officer is justified in animadverting upon the conduct of a soldier under his command, is a question of a military character to be decided by the military authorities, and one in relation to which the Courts of law ought not to interfere. *Holbrow & Cotton*. 9. Q. L. R. 105. S. C., 1882.

122. That all matters of complaint of a purely military character are to be confined to the authorities. *Ib*.

123. That military discipline and military duty are cognizable by a military tribunal and not by a Court of Law. *Ib*.

124. That an informality in the enlistment of a soldier of the government cannot be invoked by him as relieving him from military discipline after voluntarily serving with his corps. *Ib*.

### MINES & MINERALS.

##### I. RIGHTS IN.

125. Information by the Attorney General of the Province of Quebec, in the nature of a *scire facias*, questioning the validity of letters patent of the late Province of Canada granting to certain persons, their heirs and assigns forever the right to mine for gold and other precious metals within the limits of the fief and seigniory of Rigaud, Vaudreuil, the property of the grantees. *Held* that by the old law of France, which is in force in Canada, the right to minerals did not pass by a grant of lands to the grantee without special words, but remained in the sovereign and at the

cession passed to the King of England, who could grant the right to minerals to whom, soever he pleased; and in such case the owners of the soil had no right except to an indemnity for any damages they might suffer by the mining operations. *Regina & Delery*. 6 L. N., 402, & 9 Q. L. R., 225, Q. B., 1883.

### MINING LAW.

I. ACTS AMENDING *see* Q. 45 VIOT. CAP. 19 AND Q. 47 VIOT. CAP. 22.

### MINISTERS—*See* CLERGYMEN.

### MINISTERS OF STATE—*See* DEPARTMENTS OF STATE.

### MINORITY.

- I. CUSTODY OF MINORS.
- II. LIABILITY OF MINORS.
- III. POWER OF MINORS.
- IV. RIGHTS OF PARENTS.

#### I. CUSTODY OF MINORS.

126. The mother of a minor of twelve years of age (the father being dead) is entitled to the charge of her child, unless it appears that she is disqualified by misconduct or is unable to provide for the child. *Ham Exp.* 6 L. N. 115 and 27 L. C. J. 127, Q. B., 1883.

127. But where it appeared that the mother was a domestic servant and the child was well cared for by another, the Court before granting to the mother the custody of the child, required the production of affidavits showing that the mother was in a position to provide for the child's wants. *Ib.*

#### II. LIABILITY OF MINORS.

128. A tutor cannot carry on business in the name of his pupil, and to avoid liability for such acts, the minor need simply plead the nullity without alleging or proving lesion. *Levin & Trahan*, 6 L. N. 242 and 27 L. C. J. 213, S. C., 1882.

#### III. POWERS OF MINORS.

129. A minor emancipated by marriage may alone, and without the assistance of his curator, institute an action of damages for slander. *Miller & Cléroutx*, 12 R. L. 620, S. C. 1884.

#### IV. RIGHTS OF PARENTS.

130. Where a mother sued for damages,

alleged to have been caused to her minor child, without first being appointed tutrix. *Held* that she had no status. *Wilhelmy & Brisebois*, 6 L. N. 276, and 27 L. C. J. 175, C. C. 1883.

### MISDEMEANOR—*See* CRIMINAL LAW.

### MISDESCRIPTION—*See* PROCEDURE.

### MISNOMER—*See* PROCEDURE.

### MISREPRESENTATION.

I. IN CONTRACTS *see* CONTRACTS.

### MODELS.

I. TO BE FILED WITH APPLICATION FOR PATENTS OF INVENTION *see* PATENTS.

### MONEY.

I. LIABILITY FOR WHEN STOLEN *see* THEFT.

### MONEYS LEVIED.

I. MEANING OF *see* OPPOSITION AFIN DE CONSERVER.

### MONOPOLY.

I. WHAT IS.

131. On an injunction to restrain the City of Montreal from entering into a contract giving the Gas Co. the sole right to supply gas to the citizens for ten years.—*Held* not to be a monopoly in a legal sense, consumers having the option to take gas or not. *Stephen & City of Montreal*, 7 L. N. 114, S. C. 1884.

### MONTREAL.

I. ACTS AMENDING CHARTER OF *see* Q. 46 VIOT. CAP. 78, & Q. 48 VIOT. CAP. 67.

II. ELECTORAL DIVISIONS OF *see* Q. 48 VIOT. CAP. 5.



## III. POLICE LIMITS OF.

132. The "police limits" of the City of Montreal, mean the territory over which the Corporation has a police jurisdiction and are co-extensive with the corporation. *Cherrier Exp. 5 R. N. 343, Q. B. 1882.*

## MONTREAL CITY PASSENGER RAILWAY.

I. LIABILITY OF FOR ACCIDENTS *see* DAMAGES FOR ACCIDENTS.

## MONTREAL, OTTAWA, &amp; OCCIDENTAL RAILWAY.

I. ACT CONCERNING SALE OF, *see* Q. 45 VICT. CAP. 19.

MORTGAGES—*See* HYPOTHECS.

## MORTMAIN.

I. LAWS OF *see* LEGISLATIVE AUTHORITY. DIVISION OF. *In Corporation matters.*

MOTION—*See* PROCEDURE.

I. MERITS OF OPPOSITION CANNOT BE TRIED ON *see* OPPOSITION.

## MOVEABLES.

I. ACTION TO ANNUL LEASE OF *see* LESSOR AND LESSEE.

## MUNICIPAL CODE.

I. ACTS AMENDING *see* Q. 44 & 45 VICT. CAP. 22; Q. 45 VICT. CAPS. 35 & 36, and Q. 47 VICT. CAP. 18, & Q. 48 VICT. CAP. 28.

## MUNICIPAL CORPORATIONS

I. ACTION AGAINST.

II. APPEAL FROM JUDGMENT CONCERNING.

III. ASSESSMENTS.

IV. ASSESSMENT ROLL.

V. BYE LAWS.

*Must be promulgated before they can be attacked.*

VI. CAB TARIFF.

VII. CARTERS LICENSES.

VIII. CIVIL SERVANTS EXEMPT FROM MUNICIPAL DUTIES.

IX. CONTESTATION OF ELECTION.

X. CONTRACTS WITH.

XI. COUNTY TAXES.

XII. DEBENTURES *see* Q. 47 VICT. CAP. 19.

XIII. DRAINS.

XIV. ELECTION OF COUNCILLORS.

*Contestation of.*

XV. FENCES.

XVI. IMBECILES.

XVII. JURISDICTION IN MATTERS OF.

XVIII. LIABILITY OF.

*For accidents.*

*County Council for maintenance of Registry Office see* REGISTRY OFFICE.

*For footpaths.*

*For work ordered by Road Inspector.*

*Proprietors.*

*Secretary Treasurer.*

XIX. LIEN OF FOR TAXES.

XX. MEETINGS OF COUNCIL.

XXI. MUNICIPAL OFFICE.

*What is.*

XXII. PERMISSION TO CAPITALIZE DEBTS.

XXIII. POWERS OF.

*In matters of Temperance.*

*To impose taxes.*

*To make byelaws.*

*With regard to expropriation.*

*With respect to water courses.*

XXIV. PROCEEDINGS AGAINST.

XXV. PROCEEDINGS OF COUNTY COUNCIL.

XXVI. PROCÈS VERBAUX.

XXVII. QUALIFICATION OF COUNCILLORS.

XXVIII. QUALIFICATION OF MAYOR.

XXIX. REDIVISION OF.

XXX. RESOLUTIONS OF.

XXXI. RIGHTS OF WHEN CHANGED.

XXXII. ROADS AND STREETS

XXXIII. TAXES.

*Exemptions from.*

XXXIV. VOTERS LIST.

XXXV. VOTING.

I. ACTION AGAINST.

133. Where an action was taken against a Municipal Corporation under Art. 793 M. C., for not keeping the roles in order. *Held* that the plaintiff must prove that he has given the notice of eight days required by 45 Vict., Ch. 35, Sec. 26. *Perrault & Corporation du Saint-Esprit, 12 R. L. 148, C. C., 1882.*

134. And where action was taken against a Municipal Corporation under Art. 418 M. C., same judgment was rendered. *Leduc & Vigneau, 12 R. L. 214, C. C., 1881.*

135. And *Held* also in the same case that the action must be dismissed because the order made in virtue of the second par. of Art. 417 M. C., was not signed by the Agricultural Inspector in his official capacity. *Id.*

II. APPEAL FROM JUDGMENT CONCERNING.

136. A right of review is given by Q. 48 Vict., Cap. 21.

137. Appellant under Art. 1061 of the Municipal Code as amended by 39 Vic., Cap. 29, Sec. 23, cannot examine fresh witnesses in support of his appeal. *Giroux & Corporation of St. Jean*, 9 Q. L. R. 267, C. C., 1879.

138. In an action to set aside a resolution of a Municipal Council.—*Held*, that no review can be had of a judgment of the Circuit Court respecting a municipal office, and the object of the petition being to set aside the nomination of a councillor, the latter should have had notice. *Thérout & Corporation of Arthabashville*, 9 Q. L. R. 62, S. C. R., 1883.

139. There is no right of review from decisions of the Circuit Court concerning the contestation of the election of Municipal Councillors, in virtue of the Municipal Code. *Lacerte & Dufresne*, 9 Q. L. R. 190, S. C. R., 1883.

140. A resolution of a county council, rescinding a procès-verbal is not a "decision," within the meaning of Art. 1061 of the Municipal Code from which an appeal lies to the Circuit Court. *Woodward & Corporation of Richmond*, 7 L. N. 71, C. C., 1884.

141. On appeal to the Circuit Court from a decision rendered by the County Council of Hochelaga homologating a procès-verbal with regard to certain roads in said county.—*Held*, que l'appel pris à la Cour de Circuit de la décision donnée par un conseil de comté, relativement à son procès-verbal, fait et homologué sous l'autorité du conseil, doit être porté contre les intéressés, requérant tel procès-verbal, et non contre la corporation de comté, à moins que le conseil n'eût agi, *proprio motu*. *Corporation de la Paroisse de Pointe-aux-Trembles & La Corporation du Comté d'Hochelaga*, 7 L. N. 158, C. C., 1884.

142. Et que dans l'espèce ce sont les intéressés qui ont signé la requête demandant l'action du conseil, qui auraient dû être mis en cause sur l'appel, et non la corporation du comté, qui n'avait fait qu'exercer par son conseil des fonctions judiciaires. *Id.*

### III. ASSESSMENTS.

143. Under a statute of Quebec, 37 Vic., Cap. 51, Sec. 192, to that effect, the Corporation of Montreal adopted a resolution of its Road Committee that a flagstone footpath be laid in certain streets and that the cost be borne one half by the corporation and one half by the proprietors of the real estate situate on either side of such streets by means of a special assessment to be levied in proportion to frontage of their properties respectively. Appellant paid the assessment under protest and then brought action to test its validity. The action was based on a number of grounds, both of fact and law, the principal of which was that in the absence of a provision of statute allowing the system to be introduced gradually, the Council could not force the proprietors in said streets to pay the costs of one half of the new sidewalks, while the proprietors in other streets

are wholly provided with sidewalks out of the city funds, without any contribution on their part. *Held*, dismissing the action on all the grounds that it was impossible for the Court to arrive at the conclusion that because of this inequality the Legislature meant to impose a condition which, if possible, would ruin either the Corporation or the proprietors, or both. *Bain & The City of Montreal*, 5 L. N. 76 & 2 Q. B. R. 221, Q. B., 1882.

144. Action was instituted, in 1882, for the recovery of assessments and taxes for the fiscal years, from the 1st May, 1876 to the 1st May, 1879. And the conclusions against the defendant were that he be condemned personally and also hypothecarily as the owner of the real estate described in the declaration and upon which the assessments and taxes sued for accrued. During the said three fiscal years, A. B. was proprietor of the said real estate and on the 5th May, 1879, he sold the real estate in question to the defendant. *Held*, that the privileges of the Corporation of the City of Quebec for assessments and taxes is limited to those due for the current and preceding year, and that the said corporation have no general hypothec for assessments and taxes accrued previously to those for which they have such special privilege, and that the personal action for such assessments is subject to the prescription of five years. *Corporation of Quebec v. Vallérand*, 10 Q. L. R. 107, S. C., 1884.

145. A special assessment roll to defray the costs of an improvement in the City of Montreal comes into force from the date of its deposit in the office of the City Treasurer, and the prescription of three months under 42-43 Vict., Ch. 53, Sec. 12, applicable to proceedings to set aside such roll, runs from that date. *Joyce & City of Montreal*, 7 L. N. 260, S. C., 1884; & *Id.* 7 L. N. 263, S. C., 1884.

146. Petition by a municipal elector to annul a special assessment roll made by commissioners acting in virtue of a resolution of the corporation, for the purpose of local improvement, and under an appointment for that purpose made by the Court of a Review. The right to petition is based on sec. 12 of 42 & 43 Vic., c. 53, which is as follows:—"Any municipal elector, in his own name, may, by a petition presented to the Superior Court sitting to Montreal, demand and obtain, on the ground of illegality, the annulment of any by-law, resolution, assessment roll or apportionment, with costs against the corporation." *Held* that Commissioners acting under the 42 & 43 Vic., cap. 53, regulating proceedings for the preparation of special assessment rolls for improvements in the City of Montreal are not authorized to go beyond the terms of the resolution of Council settling the proportion of cost to be levied on the proprietors beneficial. And where an action was brought to annul a special assessment roll, without alluding to the resolution under which it was proposed, the Court held that the question whether the city had power to

limit its share to one third of the cost of the improvement, was not put in issue, and could not form the subject of inquiry. *Rivet vs. the City of Montreal*, 7 L. N. 122. S. C., 1884.

#### IV. ASSESSMENT ROLL.

147. A municipal corporation can make a new assessment roll only once in three years in virtue of art. 716 M. C. (1) and if it makes a new roll before the expiration of the three years a writ of prohibition will be granted to restrain the corporation from persisting in the collection of taxes then unknown. *Beauvais & Corp. de Hochelaga*, 12 R. L. 31, S. C. 1881.

148. The formalities prescribed by the Municipal Code with reference to a collection roll must be strictly followed, as in the case of an *acte de répartition* annexed to a *procès-verbal*, and where such formalities have not been observed the taxes thereby imposed are not exigible, and a sale of land for arrears of such pretended taxes will be annulled. *Corporation de Chambly & Scheffer*, 7, L. N. 390 & M. L. R., 1, Q. B. 42, 1884.

149. Where the taxes are illegal in consequence of there being no valid assessment roll in existence acquiescence will not give validity to such assessment. *Id.*

#### V. BY LAWS.

150. On a question as to the validity of a by-law of a city imposing a tax of ten dollars on commercial travellers in virtue of its act of incorporation. *Held* unnecessary that the delegated power to pass a by-law for a particular purpose be exercised in the express terms of the law authorizing it and that it is sufficient if the terms of the statute be substantially followed. *Corporation of Three Rivers & Mayor*, 8, Q. L. R. 181 & 11 R. L. 238, Q. B., 1881.

151. *Must be promulgated before they can be attacked*.—Petitioner complained that the corporation illegally passed a by-law on the 8th of April last, repealing a by-law passed on the 29th of March previous, by which the number of licenses to sell liquor was limited to two, and that the by-law of the 8th of April granted two more licenses. *Per curiam*.—The granting of two more licenses is made part of an intended by-law which never was promulgated, and consequently, cannot be at-

(1) In the months of June & July next after the coming into force of this code, and thereafter triennially in the same months, the valuers of every local municipality, must draw up, either by themselves or by any other person employed by them, a valuation roll based upon the real value of the property, in which are set forth with care and exactitude all the particulars required by the provisions of this title. Nevertheless in the counties of Gaspé & Bonaventure the valuation roll must be drawn up in the months of February & March. 716 M. C.

tacked. Art. 708 M. C., (1) limits the time to demand the annulment of a by-law to thirty days from the date it comes into force. *Morin & Corporation of Township of Garthby*, 5 L. N. 272. S. C. 1882.

#### VI. CAB TARIFFS.

152. On a *certiorari* from a conviction by the Recorder. *Held* that the tariff which regulates the hire of carriages in the city of Montreal applies also to engagements commenced within the city and terminated outside in another municipality. *Robert Exp.*, 6 L. N. 148. S. C., 1883.

#### VII. CARTERS' LICENSES.

153. The plaintiff was a carter, resident in St. Cunegonde, and licensed for that municipality under the provisions of Article 583 (1) of the Municipal Code, but not licensed for the City of Montreal. He was in the employ of the Montreal Rolling Mills Company, and on the 17th of November, 1882, was engaged in carting from the works of the company in St. Cunegonde to their establishment in the city, when he was stopped by a Police Officer and asked to exhibit his license. The plaintiff produced his license for St. Cunegonde. The policeman threatened to arrest him, and returned to the station and made his report. A warrant was issued, and the plaintiff was arrested and taken to the Seigneurs street station. The object of the Chief of Police, as was admitted by himself, was to make a test case, in order to obtain a decision upon the question whether carters who live in a municipality outside of the city limits, and who are licensed as carters for such municipality, are entitled to convey goods into the city without having also a license as carters from the City of Montreal. *Held* on *certiorari* that he had the right to cart into the city without a city license. *Richer & City of Montreal*, 7 L. N. 79, S. C., 1884.

#### VIII. CIVIL SERVANTS EXEMPT FROM MUNICIPAL DUTIES.

154. A person employed in the depart-

(1) The right of demanding the annulment of any by-law, is prescribed by thirty days from the date of the coming into force of such by-law. 708 M. C.

(1) "Art. 583. Every carter or common carrier, licensed as such in the local municipality in which he is domiciled, may convey any articles taken from such municipality, or any persons going therefrom into any other municipality erected in virtue of any law whatsoever, without paying to such other municipality any municipal license or taxes by reason of such conveyance. He may also, without being bound to take out any other license, or to pay any other tax, convey within the local municipality wherein he is licensed, goods of persons coming from any other municipality erected under any law whatsoever."

ment of wood measurers at Quebec was held to be a Civil servant in the sense of Art. 209 of the municipal code, and as such exempt from municipal duties. *Corporation de St. Romuald & McNaughton*, 8 Q. L. R. 336, C. C. 1882.

#### IX. CONTESTATION OF ELECTION.

155. A petition in contestation of the election of a municipal councillor must be presented before the close of the first term after the day of the election, if there are more than 15 days between the two dates. *Lavote & Hamelin*, 5 L. N. 94, S. C. 1882.

156. The petitioners complained of the return of the defendant, D. T., as the candidate elected by a majority of votes at an election of alderman for St. Ann's Ward in the City of Montreal, held on the 1st of March last, and they prayed that the election be set aside. The defendant, among other pleas, alleged that he was elected by a large majority of the votes legally cast in the election; that apart from the legal majority declared in his favor, there were cast against him a large number of illegal votes with should be struck off the list, and which being struck off, would leave the majority declared for the defendant not only intact but would increase it; and that the defendant was entitled to a scrutiny. He also alleged that the defeated candidate, M., personally and by his agents, had been guilty of acts of corruption. On demurrer. *Held* that the defendants had a right to allege and prove these charges even where the seat is not claimed for the defeated candidate and he is not a party in the case. *Rose & Tansey*, 7 L. N. 250, S. C., 1884.

157. In a contestation of a municipal election it is not necessary that the writ be signed by a judge or that the defendant be summoned to appear before a judge. *Massicotte & Berger*, 7 L. N. 360 & M. L. R., 1 S. C. 28, 1884.

#### X. CONTRACTS WITH.

158. The appellants entered into a deed to purchase from the Babcock Manufacturing Company, acting by its agent, Homer Baker, one babcock fire engine for the price of \$3,000 payable in 6 months, to be computed from the 15th day of July then next, with interest at 6 p. c. The engine was delivered and on an action for the price, the defendant's pleaded *inter alia* that there was no lawful meeting of the Council and that the purchase was not made in the terms of the resolution authorizing it. *Held* that the regularity of the proceedings of the Council acting colorably within its attributes cannot be called in question by the corporation, unless there has been some fraud in which the plaintiff was implicated. The delay of six months in the payment of the engine, subject to interest at six per cent was no substantial deviation from the resolution. It was a stipulation in favor of the corporation which created no addi-

tional obligation. The corporation might have paid at once. *Corporation of l'Assomption & Baker*, 4 L. N. 370, Q. B. 1881.

159. And the power of the corporation to purchase fire engines was sufficiently established by Art. 663 (1) M. C. Ib.

#### XI. COUNTY TAXES.

160. The Corporation of the County of Hochelaga being compelled to provide for the payment of certain costs incurred in suits to which the Corporation was a party, adopted a resolution imposing a tax on the several municipalities within the county, in proportion to the assessed value of their real property, in order to cover the debt. To an action against the defendant one of the municipalities so charged with a portion of the debt, it was pleaded that a tax cannot be imposed by the county council otherwise than by by-law, and that the attempt of the plaintiff corporation to impose such tax by resolution was illegal. The Court maintained the defense. *Corporation of the County of Hochelaga & Corporation of Village of Cote St. Antoine*, 6 L. N. 119 & 27 L. C. J. 177, C. C., 1883.

#### XIII. DRAINS.

161. Action for \$2,000 damages against the City of Montreal for failure to provide a public discharge drain with which plaintiff's private drain could connect. *Held*, that it is not a compulsory but only a discretionary duty for City Corporations to provide public drains in the streets of the city to enable the owners of property situated in those streets to discharge their private drains into them; but when a drain is constructed it then becomes the duty of the corporation to keep it in a state suitable for the purposes for which it was designed. *Forté & City of Montreal*, 1 Q. B. R. 280, Q. B., 1881.

#### XIV. ELECTION OF COUNCILLORS.

162. At a municipal election, the delay for nominating candidates is one hour in the opening of the meeting, but it is not necessary that a poll be demanded in writing. *Marquis et al. v. Couillard et al.*, 10 L. C. R. 98, C. C., 1876.

163. The defendant was appointed to preside at the election of two councillors of the municipal corporation of the parish of St. Thomas, on the twelfth of January, 1880, accepted the charge, took the necessary oath and at the proper time proceeded to the regular place of meeting as named in his appointment. The meeting was opened and a number of candidates were nominated.

(1) To provide for the purchase of engines, apparatus or articles suitable for the prevention of accidents by fire and for arresting the progress of fires. 663 M. C.

more than were necessary for election. At the expiration of an hour he closed the meeting and refused to grant a poll to any one on the ground that it was not the proper place of meeting. The secretary at the time was absent for his book and papers which he had forgotten, and which the defendant had refused to allow him to go for, although it was only a short distance and consequently nothing could be done. *Held*, that he was liable in damages under Art. 9 of the Municipal Code, and as he had acted in bad faith he was not entitled to a month's notice of action. *Bernatches v. Hamond*, 7 Q. L. R. 25, C. C., 1881.

164. The petitioner sought to annul the election of respondent as municipal councillor of the Township of Roxton, to which office he had been declared elected by a majority of eight votes, at the election held 9th January, 1882, on the ground that some 40 persons named in the petition trial, voted for respondent without having paid their school or municipal taxes, and consequently were disqualified by Art. 291, of the Municipal Code whereby petitioner asked that said 40 names should be struck off and he be given the seat. Respondent answered that the 40 voters attacked were legally qualified, that 23 persons named in answer, had voted for petitioner, without having the qualification required by art. 291, of the Municipal Code and should be struck off, that petitioner by himself and his agents, had corruptly paid money and other considerations to voters to corruptly induce them to vote for him, and asked that petitioner be not declared elected. At the enquete a motion was made to amend petition by adding new particulars disclosed by the evidence but the motion was rejected without costs. *Held* that the payment of taxes due by an elector for the purpose of enabling him to vote on behalf of the candidate is a corrupt act, and under art. 361. M. C. a new election will be ordered, when such corrupt acts are proved. *Auclaire & Poirier*, 28, L.C.J. 231, C. C., 1882.

165. In the municipal elections for the City of Montreal the law fixes no delay for the nomination of councillors from the opening of the meeting. *Massicotte & Berger*, 7, L. N., 360, & M. L. R., 1, S. C., 29, 1884.

166. *Contestation of*. — The election or nomination of a municipal councillor must be contested directly, and cannot be attacked incidentally by the contestation of a resolution in the adoption of which the councillor has concurred. *Paris & Couture, & Paris & Brisson & Laliberté & Barabé*, 10 Q. L. R. 1 S. C. R., 1883.

167. And the jurisdiction given to the Circuit Court, and Magistrate's Court, by art. 348 of the Municipal Code (1) concerning the con-

testation of municipal elections for violence, corruption, fraud, want of qualification or the inobservance of the formalities is exclusive of all other jurisdiction and especially of that created by art. 1016 and following of the Code of Procedure (1) but the contestation of the resolutions of council authorized by art. 100 of the Municipal Code (2), is not in so far as it concerns the nomination of councillors by the council exclusive of that permitted by arts. 1016 &c., of the Code of Procedure. *Id.*

168. And *held* also that the procedure indicated by the said arts. of the Code of Procedure is not that of *quo warranto* but a special remedy granted to individuals to complain of the usurpation or illegal detention of a public office. *Id.*

#### XV. FENCES.

169. The action was brought by the appellant, in the Circuit Court for the District of Bedford, alleging that the respondents had illegally opened a road across appellant's land and had neglected to fence it whereby appellant was injured and put to neglect in fencing his land. Respondents pleaded that the road opened was a front road and that they were under no obligation to make the fences. *Held*, that under Arts. 774 & 776 M. C., (1) and Art. 505, (2) C. C., the appellant was entitled to half the costs of the fencing. *Whitman & The Corporation of the Township of Stanbridge*, 4 L. N. 406, Q. B., 1881.

170. The appellant, an owner of real estate in the Township of Stanbridge, brought an action against the municipality of the township for having on or about the month of June, 1875, opened a front road across his farm, lot

(1) Any person interested may bring a complaint when ever another person usurps, intrudes into, or unlawfully holds or exercises, any public office, or any franchise or privilege in Lower Canada. Any office in any corporation or other public body or board. Whether such office exists under the common law or was created in virtue of a statute or ordinance. 1016 C. C. P.

(2) Any *procès-verbal* roll, resolution, or other order of a municipal Council, may be set aside by the Magistrate's Court, or by the Circuit Court of the County or district, by reason of its illegality, to the same effect as a municipal by-law, and is subject to the provisions of arts. 461 & 705. Art. 100 M. C.

(1) The fences which separate any front road from any land are at the costs and charges of the owner, or occupant of such land, when the same are necessary, 776 M. C. Every fence required on any municipal road must be well made and kept in good order according to law. 776 M. C.

(2) Every proprietor may oblige his neighbour to make in equal portions or at common expenses between their respective lands, a fence or other sufficient kind of separation according to the custom, the regulations and the situations of the locality. 506 C. C.

(1) The examination and decision of such contestation is vested in the Circuit Court of the district or County, or in the Magistrate's Court of the County in which the municipality is situated, to the exclusion of all other courts. Art. 348 M. C.

No. 4, in the 1st range of Stanbridge, the property of the plaintiff traversing lots Nos. from 4 to 8 inclusive in that range, and tearing down his fences to open said road thereby, leaving his fields and crops open to the ravages of animals which caused him great damage for having refused to fence said road. He also set up a protest made by him on the 21st June, 1876, requiring the municipality to fence the road within five days, failing which he would do so at their expense and would claim the cost thereof together with the damages suffered by him. He further alleged that his land continued so exposed until the 1st, when he himself made the fences and he claimed \$195 for the cost of the fences, protest and damages. The defendants pleaded that the establishment of the front road was within the authority and the duty of the municipality; was done with reasonable care and was a benefit not a damage to appellant. *Held*, under Art. 775 M. C., that the cost of maintaining the fences was on the proprietor. *Whitman & The Corporation of the Township of Stanbridge*, 26 L. C. J. 144 & 4 L. N. 406 & 2 Q. B. R. 112, Q. B., 1881.

171. Action against a municipal corporation for a penalty and damages under Art. 753 M. C., for not keeping up the fences on a municipal road or *chemin de descente* which they were bound by *procès-verbal* to do. Plea that the action was prescribed by six months. *Per curiam*.—The prescription does not lie. Art. 1045 M. C. (1) is what creates the prescription contended for, but it only applies to penalties enacted by by-laws, and art. 1051 expressly says that art. 1045 is not to apply penalties recoverable under the code itself, and further that they are recoverable in the same manner as penalties. *Chenier & Corporation of St. Clet*, 4 L. N. 335, C. C., 1881.

172. Art. 775 M. C., (2) as amended does not authorize the superintendent of roads to include in his *procès-verbal* more than the half of the cost of fencing that which belongs to the public as the half which is at the charge of the proprietors is not subject to the provisions of the *procès-verbal*. *Corporation of Ste. Luce & Wing*, 12 R. L. 546, C. C., 1883.

#### XVI. IMBECILES.

173. La demanderesse, ayant, en vertu des dispositions de Que. 43-44 Vic. Cap. 14, Secs. 3, 31, 32, 35 et 37 et de celles sus-transcrites, payé au Gouvernement \$65.18 pour la pension à l'asile des aliénés de Beauport, pen-

dant l'année 1882, d'O. B. fils de la défenderesse, lui en réclame le remboursement par l'action en cette cause. La défenderesse a nié le droit d'action de la demanderesse, et plaide qu'elle est incapable de payer une pension à son fils et qu'elle a, avant l'action, offert à la demanderesse de lui rembourser annuellement \$32.59. *Jugé*:—1o. Que le recours, que l'acte de Québec, 43-44 Vict. ch. 14, donne aux municipalités contre les parents obligés à la pension et à l'entretien des aliénés, pour la moitié qu'ils les oblige de payer au gouvernement de la pension, dans les asiles, des aliénés qui, avant leur internat, avaient eu, pendant six mois, leur résidence dans leurs limites, ne leur confère pas un droit nouveau, et ne fait que subroger les municipalités aux droits des aliénés, contre ceux qui leur doivent des aliments. *Corporation de l'ancienne Lorette & Voyer*, 9 Q. L. R. 282, C. C. 1883.

174. Et que dans le cas où le tribunal n'obligerait le débiteur des aliments qu'à recevoir dans sa demeure, à nourrir et à entretenir l'aliéné, la municipalité ne peut pas recouvrer plus que la valeur de cette prestation en nature. *Id.*

175. Et que le débiteur des aliments ne peut pas opposer à la municipalité qui a payé au gouvernement la pension d'un aliéné, que celui-ci n'avait pas résidé dans ses limites pendant les six mois précédant immédiatement son internat dans un asile. *Id.*

#### XVII. JURISDICTION IN MATTERS OF.

176. The Superior Court has jurisdiction in an action for the recovering of a sum exceeding \$200, for work done by a municipal corporation on roads at the expense of the proprietors and that, notwithstanding Art. 398, 401, 951, 1042, M. C. *Ross & Corporation of the Parish St. Clothilde*, 11 R. L. 520, Q. B. 1882.

#### XVIII. LIABILITY OF.

177. Corporation of Montreal, is liable for damages caused to a person by the bad state of the sidewalks, which in the present instance, had caused the plaintiff to fall and break the thumb of his right hand. *Jodoin & City of Montreal*, 11 R. L. 42, S. C. 1882.

178. A municipal corporation is responsible for the condition of the sidewalks and streets without proof that it had notice of the defects which led to the accident. *Beauchemin & La Corporation de St. Jean*, 6 L. N. 357, S. C. R. 1883.

179. For accidents.—Where a person complained of being thrown out of his cart on a dark evening and injured in consequence of building material piled up in the street without light or guard.—*Held* that the City was liable and also the contractors who had been called in *en garantie*. *Diotte & La Corporation of Montreal*, 4 L. N. 243, S. C., 1881.

180. Action of damages against the City of Montreal for injuries sustained in conse-

(1) Every suit for the purpose of recovering such penalties must be begun within six months from the date when they were incurred after which period the same cannot be brought. 1045 M. C.

(2) Upon any road which was always the line of any land, one half of the fence which separates such road from the land forms part of the work to be done upon such roads. 775 M. C.

quence of the defective state of a foot-path. *Per curiam*.—It is proved that the footpath in question had been in the state complained of for several weeks, that several persons had fallen down and met with accidents, though none of them were of as serious a character as the one under consideration. The plaintiff fell and broke his leg, in consequence of which he was confined to bed for several weeks; and in the opinion of the medical men who attended him he will never have the use of it to the same extent as previous to the accident. He was without work for three or four months, and will never be as fitted for work as formerly. Under these circumstances he is entitled to damages and the judgment will go for \$600 and costs. *Deschêne & City of Montreal*, S. C. 1884.

181. A municipal corporation is liable for accident caused by a person falling into an opening in a public square, which opening was unguarded and unprotected, and by which he suffered considerably. *Brault & La Corporation of Quebec*, 10 Q. L. R. 291, S. C. R. 1884.

182. *For footpaths*.—Case of *Grenier & City of Montréal*, (II Dig. 529, 207,) reported in *extenso* 25 L. C. J. 138, Q. B. 1880.

183. *For work ordered by road Inspector*.—Where the road inspector gave a contract for the repair of a bridge, and it appeared that in 1822, the bridge had been erected into a public bridge by *procès verbal* duly homologated, since which time it had been frequently repaired and the cost of repairing paid under the *procès verbal* without reference to the council. *Held* that the municipality was not liable. *Geoffrion & Corporation of Boucherville*, 4 L. N. 358, S. C. 1881.

184. *Proprietors*.—The Corporation of the City of Quebec having, in virtue of the Act 29 Vic. ch. 57, the absolute control of the sidewalks in the City of Quebec has no recourse "en garantie" against the proprietors from damages resulting from an action occasioned by the bad state of the sidewalks. *Corporation of Quebec & Langlois*, 10 Q. L. R. 79, Q. B. 1883.

185. In an action of damages against the City of Montreal arising out of an accident occasioned by the slippery state of the sidewalks in winter, the City called in the proprietors fronting the sidewalk in question who pleaded that if they had not done what was required of them by the city by-laws, they would be liable to a fine of \$20 and costs, or to pay the city the amount expended in making the sidewalk safe for passangers, but that they could not be held *en garantie*. On this question the court decided in favour of the church trustees and against the city. *Lulham & the City of Montreal*, Q. B. 1884.

186. *Secretary treasurer*.—Action by the superintendent of education under 40 Vic. ch. 22, against the defendant, as having been secretary-treasurer of the municipality of the parish of St. Antoine de Chateauguay, to have

him ordered to deliver up to the president of the Commissioners of the municipality, the books, papers, and monies of the municipality, and also to have him condemned to pay a sum of \$1,000 being \$20 per diem for his default in not making such delivery between the 21st October, 1880, and the 9th December, 1880. Judgment went against the defendant for \$250 for his defaults, being \$5 per diem, and he was ordered to make delivery of the books, papers, and moneys in question. *Ouimet & Fontaine*, 6 L. N. 81, S. C. R. 1883.

#### XIX. LIEN OF FOR TAXES.

187. Question as to the right of the corporation to seize and sell the effects of the wife, separate as to property, for taxes and assessments due by her husband. The question arose out of a claim made by the executors of the wife, since deceased, to be subrogated in the place of the corporation, on property of the husband for money thus levied. The parties admitted that if such a right in the corporation existed at all, it must be in virtue of Que. 34 Vic. cap. 55, sec. 21. Which reads as follows: "*Dans tous les cas où il existera une séparation de biens entre l'homme et la femme, soit contractuelle ou qu'elle existe en vertu d'un jugement d'aucune cour de justice, soit que cette séparation ait eu lieu avant ou après la passation du présent acte dans tous et tel cas, il suffira de porter au rôle de cotisation de Québec pour les cotisations, taxes personnelles et taxe de l'eau à être imposées sur des biens mobiliers ou immobiliers appartenant à la dite femme ainsi séparée de biens, le nom du mari ou celui de la femme, et tout jugement ainsi rendu contre le mari seul, pourra être exécuté contre les biens mobiliers ou immobiliers de la femme sans que cette dernière ait le droit d'arrêter l'exécution du jugement par une opposition basée sur le fait de cette séparation.*" *Held*, reversing judgment of court below, that this provision did not give to the corporation any right to sell the property of the wife for taxes due by the husband, but simply to sell the property of the wife for taxes due by her but which have been assessed in the name of the husband (as is commonly done;) and that the wife having allowed the amount to be wrongfully levied of her property without opposition was not by law subrogated in the privilege of the corporation and her claim therefor would not rank preferentially to the plaintiff's. *Venner & Blanchet*, 8 Q. L. R. 288, S. C. R. 1882.

#### XX. MEETINGS OF COUNCIL.

188. Municipal councillors may convene a special session without previous notice, provided they are all present, and at such special meeting they may, with the consent of all, transact other business besides that mentioned in the notice. *Paris & Couture*, 10 Q. L. R. 1, S. C. R. 1883.

## XXI. MUNICIPAL OFFICE.

189. *What is.*—Motion to reject an appeal on the ground that the case was not appealable under Art. 1033 C. C. P. The action was as to the election of a school commissioner and it was contended that he was a municipal officer. *Held* that a school commissioner-ship was not a municipal office within the meaning of Art. 1033. (1) *Sauvé & Boileau*. 5 L. N., 134, Q. B., 1882.

## XXII. PERMISSION TO CAPITALIZE DEBTS.

Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. It shall be lawful for any Municipal Corporation of a City, Town, Village, Parish, Township or other Municipal Corporation to capitalize their debts, lawfully contracted by them, under by-law heretofore passed and submitted to the Electors and to stipulate the judgment by annuities for a term not exceeding fifty years. 44-45 Vic. Cap. 26.

2. The interest upon the capitalized debt, shall in no wise exceed the rate of six per cent, per annum, and shall be payable at such times as shall be agreed upon, yearly or oftener.

3. Corporations may, by a resolution of the Council issue debentures for the amount of such capitalized debts, payable at such time and in such places as shall be fixed in the said debentures.

4. It shall not be necessary to submit such by-law for the approval of the electors.

## XXIII. POWERS OF.

190. Le Gouvernement de la Province de Québec ayant, par un ordre en Conseil transporté à la Corporation de St. Vallier, certains droits qu'il avait sur un chemin situé dans les limites de la Municipalité de St. Vallier, et sur le terrain de la maison servant à loger le gardien d'un pont de péage, et l'intimée ayant réclamé ce terrain de l'appellant, qui en avait la possession: *Jugé*. Que indépendamment de l'ordre en Conseil, l'intimée pouvait réclamer le chemin en question comme chemin public. *Blaine & Corporation de St. Vallier*. 1 Q. B. R., 147, Q. B., 1880.

191. Qu'elle pouvait aussi, en vertu de l'article 4 du Code Municipal transporté les droits que la Couronne pouvait avoir sur ce chemin et sur la propriété attenante à l'endroit où se trouvait le pont. *Ib.*

192. Que l'intimée n'était pas tenu de produire une autorisation du Conseil Municipal pour poursuivre l'appellante, l'autorisation se présumant du fait seul que l'action n'est pas désavouée. *Ib.*

193. The corporation of the City of Montreal ordered a drain to be made under a statute and a by-law in accordance with the

statute, which authorized them to do so whenever the road committee considered it necessary. The road committee had reported that it was *advisable* the drain should be made. The defendant being sued for his assessment for the drain, set up this discrepancy. *Held* that the variance was not material and in any case the defendant could not incidentally raise the question of the legality of the by-law or the resolution. *City of Montreal & Tracey*. 4 L. N. 156. S. C., 1881.

194. In order to justify the substitution (under 37 Vict., (Que) c. 51., s. 33,) of another person for one of the originally elected members of the Board of Revisors, the member replaced must be dead or absent. Therefore the appointment of another person in the place of a member who is personally present at the meeting of the City Council at which he replaced, is illegal. *Lamontagne & Stevenson*. 6 L. N., 53. S. C., 1883.

195. On an injunction to restrain the corporation of the town of Levis from proceeding with the provisions of a by-law.—*Held* that a municipal corporation cannot validly do an act foreign to the purpose of its incorporation without special power for the purpose being given to it by law; that even if that power were given to the corporation, it could not be exercised by its council independently of the electors, and in the absence of express provisions of law to that effect; that a mere inference drawn from a private statute amending the charter of a railway company, cannot confer powers upon a municipal corporation and therefore: That sec. 2 of the act 44-45 Vict., c. 10, obliging the Quebec Central Railway to continue its line to certain wharfs, "provided, &c. that the Corporation of the town of Levis furnished the said company with its valid guarantee, &c.", did not give the municipal council of the town of Levis power to pass a by-law furnishing such guarantee. *Quebec Warehouse Co., & Corporation of Levis*, 9 Q. L. R. 305. S. C., 1883.

196. *In matters of temperance.*—Municipal corporations have no power under Art. 561 (1) of the Municipal Code, to prohibit the sale of intoxicating liquors within the limits of the municipality. *Edson & Corporation of Hatley*, 7 L. N. 68, & 27 L. C. J. 312, S. C. 1883.

197. *To impose taxes.*—The Act of Incorporation of the city of Three Rivers, 20 Vict. Cap. 128, Sec. 136, S. S. 7, authorized the corporation to tax all peddlers or petty cheapmen (*colporteurs ou marchands ambulants*), bringing for sale into the city any articles of commerce. Under this authority the appellants passed a by-law imposing a tax of ten

(1) An appeal from any final judgment rendered under the provisions contained in this chapter lies to the Court of Queen's Bench, except in matters relating to municipal corporations and offices, provided the writ of Appeal be issued within forty days from the rendering of the judgment appealed from. 1033 C. C.

(1) To prohibit the sale of intoxicating liquors in quantities less than three gallons, or one dozen of bottles of at least three half pints each, at one and the same time, and the quantity of licenses therefore within the limits of the municipality, and on the ferries which are dependencies of such municipality. 561 M. C.



dollars upon all strangers and non-residents who should come into the said city to sell or offer for sale goods by sample, cards or other marks. The respondent, a commercial traveller, having offered goods for sale on sample but made no sale, was condemned to pay the said tax and distress was taken against his effects. He resisted the seizure on the ground that the by-law was illegal as being in restraint of trade, as discriminating between residents and non residents, and as not following the terms of the Statute.—*Held* that the power granted to the corporation by its acts of incorporation need not be exercised in the precise terms of the Statute, and that it is sufficient if in the by-law the terms of the Statute be substantially followed, and the respondent was within the fair meaning and intent of the Act a *Colporteur et marchand ambulant*. *Corporation of Three-Rivers & Mayor*, 8 Q. L. R. 181, & 11 R. L. 238, & 2 Q. B. R. 84, Q. B. 1881.

198. And *held* also that discrimination in taxation between residents and non residents is only an objection when unjust and oppressive. *Ib.*

199. Neither could the tax in question be considered in restraint of trade. *Ib.*

200. But in a case from St. John, N. B., decided in the Supreme Court, appellant brought an action against the Police Magistrate for wrongly causing him, a commercial traveller, to be arrested and imprisoned on a warrant issued on a conviction by the Police Magistrate, for violation of a by-law made by the Common Council of the city of St. John, under an alleged authority conferred on that body by 33 Vict. Cap. 4, passed by the legislature of New-Brunswick. Section 3 of the said Act authorized the mayor of the said city of St. John to license persons to use any art, trade, &c., within the city of St. John on payment of such sum or sums as may, from time to time, be fixed and determined by the Common Council of St. John, &c., and Sec. 4, empowered the mayor &c. by any by-law or ordinance to fix and determine what sum or sums of money should be, from time to time, be fixed for license to use any art, trade, occupation, &c., and to impose penalties for any breach of the same, &c. The by-law or ordinance in question, discriminated between resident and non resident merchants, traders, &c. by imposing a license tax of \$20 on the former and \$40 on the latter.—*Held* that assuming the Act 33 Vict., Cap. 4 to be *ultra vires* of the N. B. Legislature, the by-law made under it was invalid because the Act in question gave no power to the Common Council of St. John to discriminate between residents and non residents. *Jonas & Gilbert*, 4 L. N. 93, & 5 S. C. Rep. 356, Su. Ct. 1881.

201. In another case in the city of Quebec, the petitioner in prohibition, was proceeded against by the corporation of the city for having, in said city, on or about the 3rd of July, 1881, acted as a commercial traveller in selling hardware by sample, without having first obtained from the Clerk of the city, the license

required, and without having first paid to the Treasurer of the city the sum of \$60. He pleaded merely not guilty. On proof of the facts, he was convicted and condemned to pay \$60 and costs. In his petition, petitioner pleaded that the by-law under which he had been condemned was illegal and assumed powers and rights not conferred on it by Statute. He also pleaded that the case against him had not been proved and adduced evidence as in the original case.—*Held*, distinguishing the case from *Mayor and Corporation Three Rivers (supra.)*, that a proceeding in prohibition was not an appeal nor a revision, and could not give rise to evidence of anything outside the question of jurisdiction as to which there could be no doubt, the by-law under which the conviction was had, being in the very words of the Statute, and the Statute having been passed prior to Confederation. Petition dismissed. *Piché & Corporation of Quebec*, 8 Q. L. R. 270, S. C. 1882.

202. And *held* that a merchant who sends out agents and travellers to take orders on sample or sell goods is a travelling merchant and within the terms of the said Statute and obliged to take out a license. *Ib.*

203. Motion to quash a conviction made by the Treasurer, on the 30th December, 1881. On the 23th June 1876, by-law No. 99 was passed by the City Council, enacting that (sec. 2) "From and after the first August next, no person shall carry on the business of a junk dealer in this city, unless such person shall have obtained from the City Treasurer a license to that effect, for which such person shall pay the sum of fifty dollars." The petitioner was charged by the City in 1881, a business duty on rental \$1,200 at 7½ per cent, \$90, and special rate for junk dealer, \$50. The special rate as junk dealer was not paid, and he was accordingly convicted of the offence of carrying on the business of a junk dealer without licence, and fined accordingly. The conviction is alleged by petitioner to be bad "because the Council of the said City is authorized by the charter of the said city to license and regulate, but not to tax, junk stores, and has only the right to charge a reasonable fee for the cost of the license, and for the labor attending the issue thereof, but not to use such license as a means of raising a revenue for the said city; because the said sum of fifty dollars is more than the reasonable cost of such a license as is contemplated by said by-law, and of the labor attending the issue of the same, and of inspecting and regulating the business of persons carrying on the business of junk dealers and the same as sought to be collected from the defendant was a tax for revenue purposes." *Held* that a power to license and regulate junk stores does not include a power to tax them for revenue. *Walker & The City of Montreal*, 5 L. N. 201, S. C. 1882, & 8 L. N. 395, Q. B. 1885.

204. To make by-laws.—The City of Montreal being charged by law with the public health and safety, has the right to pass a by-law to

prohibit the sale of animal food within the limits of the City which has not been killed in public abattoir provided for that purpose. *Granger & City of Montreal*, 11 R. L. 560, S. C. 1882.

205. *With regard to its expropriation*.—Art. 407 C. C. (1) does not empower a municipal Corporation, to expropriate the property of individuals for public purposes without first determining a just and equitable indemnity. *Dupras & Corporation d'Hochelaga*, 12 R. L. 35, S. C. 1881.

206. *With respect to water courses*.—The plaintiff sued the Corporation, defendant, to set aside a *procès verbal* respecting a water course homologated by the Municipal Council of the parish of Ste-Anne du Bout de l'Isle. *Held* that the Council had acted illegally in making a *procès-verbal*, by which the water was conducted on to the property lower down the stream where it would not have gone if it had not been so conducted, the result being to impose a servitude on the property, on which it was caused to flow, which obliged the owner to spend labor and money in draining. *Reburn & Corporation de Ste. Anne*, 11 R. L. 133, S. C. 1881.

#### XXIV. PROCEEDINGS AGAINST.

207. L'avis de huit jours et le dépôt de dix piastres, exigés par la section 26 du chapitre 36 de la 45 Victoria, pour l'émanation de l'action accordée par l'article 793 du Code Municipal, ne sont pas requis dans les actions civiles intentées contre les corporations municipales à raison du mauvais entretien de leur chemin. *Laurin & La Corporation de la paroisse du Sault-au-Récollets*, 7 L. N. 348, C. C. 1884.

#### XXVV. PROCEEDINGS OF COUNTY COUNCIL.

208. A County Council cannot by mere resolution, without notice, amend or rescind a *procès verbal* establishing a highway. *Allen & The Corporation of Richmond*, 7 L. N. 63, C. C. 1884.

#### XXVI. PROCES VERBAUX.

209. Les dispositions d'un *procès-verbal* dûment homologué et confirmé doivent être exécutées et observés aussi longtemps qu'il n'a pas été dûment remplacé ou annulé, et que les intéressés ne peuvent réclamer un état de chose autre que celui qui découle des dispositions du dit *procès-verbal*. *Lemire & Courchène*, 28 L. C. J. 192, Q. B. 1868.

210. La demanderesse réclamait \$436, qui était la proportion mise à la charge d'un certain nombre de contribuables de Laprairie, dans le prix des travaux ordonnés par *procès-*

verbal fait sous la direction du Bureau des Délégués des comtés de St-Jean et de Laprairie. Cette somme comprenait aussi les frais du *procès-verbal*, des avis, de l'acte de répartition et de la vente des travaux à l'entreprise. Il s'agissait d'un chemin déjà ouvert qui conduit de St-Jean à Laprairie et passe aussi dans deux comtés voisins. Le *procès-verbal* ordonnait le creusement des fossés, la réparation du chemin et des ponts et la construction des clôtures sur les deux côtés de la route dans toute son étendue ; le *procès-verbal* pourvoyait en outre au mode de réparation et d'entretien du chemin et des clôtures. L'officier chargé de préparer ce *procès-verbal* avait inclus dans les travaux à faire sur le chemin toute la clôture des deux côtés de la ligne ; enlevant ainsi, en violation de l'article 775 du code municipal, la part de clôtures réservée par la loi aux propriétaires voisins. Le Bureau des délégués des deux comtés a homologué ce *procès-verbal* et a fait l'acte de répartition nécessaire entre les contribuables intéressés. *Held* null on the grounds stated and action dismissed. *La Corporation du Comté de St. Jean & La Corporation de la paroisse de Laprairie*, 7 L. N. 327, C. C. 1884.

#### XXVII. QUALIFICATION OF COUNCILLORS.

211. On the contestation of two petitions demanding that certain resolutions of the municipal corporation, defendant, be quashed and set aside as illegal, under Arts. 100 & 698 of the municipal code. *Held*: Que les articles 208 et 337 du code municipal ne donnent pas pouvoir à un conseil municipal de faire une enquête à la demande d'un contribuable pour vérifier la suffisance de la qualification foncière de l'un de ses membres qui a dûment produit sa déclaration de qualification et se prétend dûment qualifié et ne l'aurorisant pas à déclarer le siège de ce membre vacant, si cette qualification se trouve, par le résultat de l'enquête, insuffisante dans l'opinion de la majorité du conseil. *Belsil & Corporation des Trois-Pistoles*, 8 Q. L. R. 165, C. C. 1882.

212. Et qu'un conseiller qui a dûment produit sa déclaration de qualification, en vertu de l'article 283 du dit code, est en possession de son siège, et se prétend lui-même dûment qualifié ne peut être dépossédé de son dit siège pour prétendu défaut de qualification foncière que par les tribunaux ordinaires. *Id.*

213. Et que le code municipal n'exige pas que le président temporaire (autre que le maire ou le pro-maire) d'un séance du conseil sache lire et écrire. *Id.*

#### XXIII. QUALIFICATION OF MAYOR.

214. That the provision of article 335 of the municipal code requiring a mayor of a municipality to be able to read and write, must be largely and beneficially construed, and that a man who can read or write only with

(1) No one can be compelled to give up his property except for utility and in consideration of a just indemnity previously paid. 407 C. C.

difficulty is not sufficiently proficient to hold the position of mayor. *Turgeon & Noreau*, 9 Q. L. R. 363, C. C. 1873.

#### XXIX. REDIVISION OF.

215. Up to 1869, the territory which composes at present the town of Rimouski and the parishes of Rimouski and of the Sacred Heart, formed but one parish, that of St. Germain de Rimouski. In 1869, by special act of the legislature, 32 Vic. cap. 71, a part of the territory was detached to form the Village of Rimouski. *Held* that after the dismemberment of a municipality and its division into two distinct municipalities, all the territory forming part of the former municipality remains liable for its former debts, and the Council of the former municipality and its officers may receive from all the territory, the taxes imposed for this object and may impose new taxes for the same purpose, based on the value of the taxable property, according to the valuation roll in force in the original municipality and the original municipality has a right of action to recover such taxes; but the new municipality can only be held liable where there is an agreement to that effect between these two corporations, according to Art. 84 of the municipal code. *Corporation Sacré-Cœur & Corporation St. Germain*, 10 Q. L. R. 316, Q. B. 1884.

#### XXX. RESOLUTIONS OF.

216. Where, by resolution of Council, a municipal corporation agreed to grant a contract to a certain firm which had tendered for it and a change in the firm's name was subsequently made. *Held* that the Corporation was not bound by the resolution (1). *St. James & Corporation St. Gabriel*, 12 R. L. 15, S. C. 1881.

217. The defendants, a municipal corporation, passed a resolution affecting to remit certain arrears of taxes on the ground that the plaintiff was about to invoke prescription. *Held* that this was injurious and that the plaintiff was entitled to have the resolution expunged from the minutes. *Boileau & The Corporation of the parish of St. Genevieve*, 4 L. N. 404, S. C. 1881.

#### XXXI. RIGHTS OF WHEN CHANGED.

218. *Held*, (reversing the judgment of the Superior Court) that Art. 82 M. C., (2) gives

[1] Confirmed in Supreme Court but not reported.

(2) The council is bound for the settlement of joint debts and obligations, and its officers, are authorized to collect throughout the whole territory liable for such debts and obligations, the taxes imposed for the payment of the same, by the by-laws in force at the time of the change of limits, or to impose thereon by by-law, new taxes to effect the full pay-

the recourse of the old municipality against the rate-payers of the new municipality, or such of them as are owners of lands subject to an old obligation, and not against the new municipality. *Corporation du Sacré-Cœur & Corporation de Rimouski*, 7 L. N. 407, Q. B. 1884.

#### XXXII. ROADS AND STREETS.

219. Case of *Guy & City of Montreal* (II Dig. 539-251) reported in *extenso*, 25 L. C. J. 132, Q. B., 1880.

220. Where a portion of a municipality has been detached in order to form a separate municipality, the ratepayers within the detached portion are no longer bound by any *procès verbal* under which they were previously obliged to maintain any part of a road within the portion from which they have been detached. (Arts. 5 & 90 M. C.) *Deschênes & La Corporation de Ste. Marie*. 7 Q. L. R., 50. S. C., 1880.

221. Action to recover the sum expended in repairing a road, together with twenty per cent, on the amount, under art. 398, M. C., after notice to the proprietor or occupant by the inspector. Plea that the road was not a public road and the defendant was not bound to keep it in repair. Defendant relied on art. 825, M. C. *Held* that where a person who already has a front road on his farm voluntarily opens another road to the public through his land, such road will be considered a municipal front road under M. C. 397. *Corporation of the Village of Ste Rose & Dubois*. 4 L. N., 334. C. C., 1881.

222. Where action was brought against the municipal corporation of the City of Quebec, for permitting the construction and operation of a railway in one of the streets of the City, to the injury of plaintiff, and the detriment of his property in a manner not authorized by the statute and not regulated by any by-law of the city.—*Held* that the corporation to whom the administration only and not the property in the streets belonged were jointly and severally liable with the railway for any damage which might ensue to the public thereby. *Renaud & La Corporation de Québec*. 8 Q. L. R. 102. S. C., 1881.

223. Where land was given to the City of Montreal to be used as a public market and the City long after converted it into a public thoroughfare and registered it in the register of public streets and squares.—*Held* that the donors were not entitled after the lapse of ten years to claim the rescission of the donation on the ground of such conversion. *La Chevretonnière & City of Montreal*, 6 L. N. 348. Q. B., 1883.

224. Le demandeur est propriétaire sur la

ment of such debts and obligations, with all the rights and powers conferred upon the council and its officers, that governed the same before the division and separation of the territory. 82 M. C.

rue Ste. Catherine, à Montréal. La Cité de Montréal ayant changé le niveau de la rue, comme sa charte lui en donne le droit, le demandeur intenta contre elle une action en dommages pour \$3,525. La défense de la défenderesse fut générale. La Cour Supérieure rendit le jugement suivant : *Jugé*, qu'une corporation municipale est responsable du dommage qu'elle cause à un propriétaire sur une rue dont elle change le niveau. *Turgeon & City of Montreal*, 7 L. N. 383, & M. L. R., 1 S. C. 111, S. C., 1884.

225. A Municipal Corporation which is obliged to raise the elevation of a street, and obtain the authority of the legislature to do so, would be responsible only for damages resulting from the depreciation of the value of the property affected by the change, and is not bound to raise the buildings in proportion to the street. *Bronsdon & Montreal City*, 12 R. L. 610, S. C. 1884.

### XXXIII. TAXES.

226. Where the Corporation of Quebec sued for taxes, and the Crown intervened as tenant, the premises in question being used as a bonded warehouse, and claimed that they were not liable for taxes, the intervention was dismissed on the ground that the premises did not come under any exemptions to which the crown was entitled under 23 Vic. Cap. 61, Sec. 58, (1) and even if they did that, that would not exempt the proprietor. *Corporation of Quebec & Leaycraft*, 7 Q. L. R. 56, S. C. 1881.

227. The defendant holding a promise of sale from the Dominion Government, of certain property in the City of Montreal, was sued by the City for the taxes on the property for the then current year. He did not obtain possession of the property until some time afterwards. *Held*, that he was not liable for the assessments and that the assessment is indivisible, and falls entirely upon the person who is proprietor at the time the assessment becomes payable, and therefore a person who becomes proprietor after that date is liable for no portion of the assessment for the current year. *Hogan & City of Montreal*, 7 L. N. 378, & M. L. R. 1, Q. B. 60, 1884.

228. *Exemptions from*.—A house situated on the same lot of land as Morrin's College, in the City of Quebec, to which it belonged, and occupied as a private dwelling by two of the professors of the College, was held to be exempt from municipal taxes, under 29 Vic.

Cap. 57, sec. 25, as employed for the purposes of education, although part of the salaries of the professors was deducted as rent. *The City of Quebec & Morrin's College*, 8 Q. L. R. 3, R. C. 1880.

### XXXIV. VOTERS' LIST.

229. On the contestation of an election, petition asking that the election of the defendant as counsellor for the village of Berthier be annulled. *Held*.—Que pour avoir le droit de voter aux élections municipales, et en vertu du Statut de Québec, 40 Vict. ch. 29, il faut non-seulement que le nom du votant soit sur le rôle, ou la liste sur laquelle on vote, mais aussi que tel votant ait, au moment du vote, toutes les qualités requises pour être voteur. *Dostaler & Coutu*, 11 R. L. 109, C. C. 1880.

230. Et que les électeurs dont les noms étaient sur la liste, ou le rôle, et qui se trouvaient lors du vote qualifiés comme propriétaires, locataires ou occupants des mêmes propriétés mais en qualité différente, ou d'autres propriétés dans le même quartier, évalués d'ailleurs au chiffre requis pour donner le cens électoral municipal, avaient droit de voter. *Ib.*

231. Que le fait de la part d'un candidat ou de ses agents de payer les taxes municipales et scolaires des voteurs, pour leur permettre de voter en faveur de tel candidat, constitue un acte de corruption suffisant pour rendre nuls les dits votes, et par suite pour faire annuler l'élection, si la majorité s'en trouve affectée. *Ib.*

232. Qu'il n'y a pas lieu d'annuler le vote d'un électeur qui n'aurait pas acquitté toutes ses taxes scolaires, s'il est fort douteux qu'il en dût davantage, et que, s'il ne les a pas toutes payées en temps utile, c'est par suite d'une erreur du Secrétaire Trésorier des écoles. *Ib.*

### XXXV. VOTING.

233. At an election of mayor of the local council of St. Telesphore, of whom three voted for the petitioner and two for the presiding mayor who thereupon voted for himself. The votes being then equal he gave a casting vote for himself and declared himself elected. The vote of the petitioner for himself was refused. *Held* that the presiding officer had no right to vote for himself, except on a tie and as the petitioner had three out of the five, he should have been declared elected. *Lemieux & Camtin*, 7 Q. L. R. 16, C. C. 1881.

[1] All public buildings intended for the use of the civil government, for military purposes, for the purposes of education or religious worship, all property belonging to Her Majesty, all parsonage houses, burying grounds, charitable institutions and hospitals duly incorporated, and the lands upon which such building are erected shall be exempt from all assessments or rates imposable under this Act. 23 Vic. Cap. 61, Sec. 58.

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MUR MITOYEN.

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MUTUAL INSURANCE

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- I. BY BILL OF SALE *See* SALE.

NATURAL CHILDREN—*See* CHILDREN.

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NAVIGATION.

I. ACT TO AMEND THE LAW RESPECTING BRIDGES, BOOMS, AND OTHER WORKS CONSTRUCTED OVER OR IN NAVIGABLE WATERS UNDER THE AUTHORITY OF PROVINCIAL ACTS C. 46 VIC., CAPS. 43 & 44; C. 48-49 VICT. CAP. 6.

II. LIGHTHOUSES *See* C. 45 VICT. CAPS. 36 & 37.

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NEGLECT.

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NEGLIGENCE—*See* DAMAGES.

- I. CONTRIBUTORY.

1. Where a valuable horse received an injury while being shod by a farrier, and it appeared that the accident was caused by the groom who accompanied the animal striking him with a whip, the farrier was relieved from liability notwithstanding the unsafe condition of the floor of the smithy, but for which no damage to the horse would have resulted. *Allan & Mullin*. 4 L. N. 387. S. C., 1881.

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NEGOTIABLE INSTRUMENTS.

- I. WHAT ARE *See* BILLS OF EXCHANGE, &c.

NEWSPAPERS.

I. CONTEMPT OF COURT BY *See* CONTEMPT OF COURT.

II. LIBEL BY *See* LIBEL.

III. TRANSMISSION OF *See* C. 45 VICT. CAP. 9.

NEW TRIAL.

- I. GROUNDS OF.

2. On a trial for libel, by a newspaper, the verdict having been against the plaintiff a new trial was applied for on the ground of misdirection as to matter of fact. The portion of the charge objected to was as follows: "The law of this country is not different from that of England in a great many respects. As regards the public rights and liberties of the subjects of the English Crown they would be always be held by me to be the same in respect of the right to discuss public events here as in other parts of the empire. If the jury had sufficient proof that the defendant published the statement complained of about this man, all the particulars of which were public and known, and elicited in the Police Court, and that they did so fairly and with the sole desire to inform the public of the truth without any injurious intent, then they ought to find for defendant." *Per curiam*.—Were all the particulars set forth in the article complained of public? Had they been elicited in a police court? If we could answer in the affirmative we would be against the objection but we are forced, considering the article's caption, "The Rinfret swindle" and its long comments or narrative about plaintiffs former employments and engagements to answer in the negative. Under these circumstances we find there has been misdirection and motion for new trial granted. *Montague & The Gazette Printing Company*. 5 L. N. 173. S. C., 1882.

NORTH WEST MOUNTED POLICE.

I. ACTS RESPECTING C. 45 VICT. CAP. 29, & C. 48-49 VICT. CAPS. 53 & 54.

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I. AMENDMENT OF *See* C. 45 VICT. CAP. 28 & C. 47, VICT. CAP. 33 & C. 48-49 VICT. CAP. 51.

## NOTARIAL CODE.

- I. ACT CONSOLIDATING *See* Q. 46 VICT. CAP.  
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## NOTARIAL DEEDS.

- I. PROOF OF SIGNATURE TO *See* EVIDENCE.

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- I. ACT RESPECTING *See* Q. 45 VICT. CAP. 30.  
II. CANNOT BE EXAMINED AS TO DEEDS.  
III. DUTIES OF.  
IV. FEES AND CHARGES OF.  
V. NOTIFICATIONS & PROTESTS.

- I. ACT RESPECTING *See* Q. 45 VICT. CAP. 30.

- II. CANNOT BE EXAMINED AS TO DEEDS.

3. In an action to set aside a lease.—*Jugé*, que le notaire qui a fait le bail ne peut être examiné pour prouver ce qui s'est passé lors de la confection de l'acte, et qui n'apparaît pas par l'acte lui-même. *Lemonier & DeBellevue*, 5 L. N. 426, S. C. 1882.

- III. DUTIES OF.

4. It is the duty of a notary when executing a deed to explain to an illiterate grantor, the legal and equitable obligations imposed by the deed and consequent on its execution. *Ayotte & Boucher*, 6 L. N. 26 and 3 Q. B. R. 123 and 9 S. C. Rep. 460, Su. Ct. 1883.

- IV. FEES AND CHARGES OF.

5. Where the plaintiff had been employed by the defendant for several years as notary and had been in the habit of charging less than the tariff prices.—*Held* that there was an implied contract to continue working at the reduced rate which could not be changed without notice. *Andrews & Quebec & Lake St. John Railway*, 9 Q. L. R. 53, S. C. 1882.

V. NOTIFICATIONS AND PROTESTS, *see* Q. 47 VICT. CAP. 14, AMENDING 1209 C. C. WITH REGARD TO—*Infra in* Vo. OBLIGATIONS.

NOTES AND BILLS—*See* BILLS OF EXCHANGE.

## NOTICE.

- I. OF ACTION, *see* PROCEDURE.

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## NUISANCE.

- I. By OBSTRUCTION OF STREETS.  
II. RIGHT OF LEGISLATION WITH REGARD TO.

- I. By OBSTRUCTION OF STREETS.

6. The defendant, the agent of the Bell Telephone Co. of Canada, was indicted for illegally erecting three telegraph poles in Buade Street, a leading thoroughfare in the City of Quebec, thereby obstructing the Queen's highway to the common nuisance of the public. The Company was incorporated by Act of the Parliament of Canada, 43 Vict., Cap. 67, with power to establish telephone lines in the several Provinces of the Dominion and to construct, erect and maintain lines along any highway, street, bridge, water-course or any other such place, or across or under any navigable waters, either wholly in Canada or dividing Canada from any other country, "provided that in cities, towns and incorporated villages the opening up of the street for the wires underground, shall be done under the direction and supervision of the engineer or such other officer as the council may appoint and in such manner as the council may direct, and that the surface of the street shall, in all cases, be restored to its former condition by and at the expense of the Company." This charter and the consent of the council, duly obtained, were relied on by the defendant as a plea to the indictment. The jury, under the direction of the Court, found a verdict of guilty, subject to the question reserved, for the determination of the Court *in banco*, whether the said Company had authority under their statute, or were otherwise authorized by law to place the said poles in the said street. *Regina & Moher*, 7 Q. L. R. 183 & 5 L. N. 43, Q. B., 1881.

- II. RIGHT OF LEGISLATION WITH REGARD TO.

7. And on the reserved case.—*Held* sustaining the verdict, that the establishment of the company in Quebec, was one purely of a local character, contending to serve local purposes, having no pretention to connect provinces or even to cross navigable rivers, and of such a nature as to be *ultra vires* of the Dominion Parliament, and falling exclusively within the jurisdiction of the Local Legislature, and that to give the Dominion Parliament power to authorize the Bell Telephone Co. to impede circulation and traffic in the streets of Quebec, one of two conditions would have been required, either the company should have been incorporated for the purpose of connecting by telephone lines this province with some other province, or it should have been declared by parliament to be for the general advantage of Canada, or of two or more of the Provinces. *Id.*

8. Petitioners were occupants of a factory of cut nails, and it was complained that the chimney sent forth smoke in such quantity as to be hurtful to public health and safety, and that they refused to remove and abate the nuisance contrary to the by-law of the City of Montreal. Defendants pleaded that the city had no jurisdiction to enact the by-law and did not enact it in virtue of any competent legislative authority. The defendants were convicted. *Held* that the power of the Dominion Parliament to enact a general law of nuisance as incident to its rights to legislate as to public wrongs is not incompatible with a right in the Provincial legisla-

tures to authorize a municipal corporation to pass a by-law against nuisances hurtful to public health as incidental to municipal institutions. *Pillow & City of Montreal*. 6 L. N. 209 & 27 L. C. J. 216, S. C. 1883, & 8 L. N. 354, Q. B., 1885.

NUNS.

I. CIVIL RIGHTS AND STATUS OF, *see* THE CASE OF CHARLEBOIS AND CHARLEBOIS. 26. L. C. J., 364. Q. B., 1882.

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## OBLIGATIONS.

- I. DEFAULT.
- II. INTERPRETATION OF.
- III. JOINT & SEVERAL.
- IV. NOVATION.
- V. PROTESTS.
- VI. SUBROGATION.

## I. DEFAULT.

1. A lessor is not liable in damages owing to the bad state of the premises, unless put in default, and, where the deed is notarial, the notice must be in writing. *Marcil & Mathieu*, 7 L. N. 55, S. C., 1883.

2. The defendant undertook to return a certain number of shares in a railway before a day stated or to pay an amount in money. the shares were not returned. *Held*, that the contract being of a commercial nature, the debtor was put in default by the lapse of the time of performance. *Geoffrion & Senecal*, 6 L. N. 201, S. C., 1883.

3. By the Act creating the Normal Schools, it is provided that a certain number of scholarships may be established for the assistance of students with the stipulation that the money should be returned if the student refused or neglected to teach when called upon to do so. The defendant was sued for \$64, amount of two years' scholarship given to his son on the ground that the son had always refused to teach when required to do so. *Held*, that the action must be dismissed for want of proof that the son had ever been put in default to teach. *Principal of Jacques Cartier School & Poissant*, 12 R. L. 177, S. C. 1883.

## II. INTERPRETATION OF.

4. Case of *Cushing & Davis* (I Dig. 896-19) confirmed in appeal, 12 R. L. 522, Q. B., 1864.

## III. JOINT &amp; SEVERAL.

5. Action against a municipal corporation for permitting a railway to be constructed and operated in the streets of the city to the great damage of plaintiff's property. *Held*, that where the acts complained of were illegal and unauthorized that the corporation, as the legal guardians and administrators of the public streets, were jointly and severally liable with the railway for the wrong complained of. *Renaud & La Corporation de Québec*, 8 Q. L. R. 102, S. C., 1881.

6. Two or more persons committing a *délit* are jointly and severally responsible, and a settlement made with one of them discharges the others. *Giroux & Blais*, 7 Q. L. R. 309, C. C., 1881.

7. Joint executors who have taken undivided possession of the property of the succession are not only obliged to render a joint account but are held jointly and severally to the payment of the balance. *Hoffman & Pfeiffer*, 7 Q. L. R. 125, S. C., 1881.

8. A sale of hemlock bark still standing and uncut is a commercial matter and where two defendants were sued for the value of such bark they were held to be jointly and severally liable. *Fee & Sutherland*, 9, Q. L. R. 55, S. C. R., 1882.

9. There is no solidarity between heirs for the value of notarial services rendered in settling the succession. *Champeau & Moquin*, 6 L. N. 60, S. C., 1882.

## IV. NOVATION OF.

10. An obligation given as security for the payment of certain promissory notes, does not effect novation of such notes, and the holder thereof may claim on them by giving credit for the amount of the obligation. *Dupuis & Gagnon*, 28 L. C. J. 257, S. C., 1877.

## V. PROTESTS.

Art. 1209 of the Civil Code is repealed and replaced by the following:

"1209, Notifications, summons, protests and services, by which a reply is required, may be made by one notary, whether the party in whose name they are made has or has not signed the deed. Such instruments are authentic and make proof of their contents until contradicted or disavowed. But nothing inserted in any such instrument as the answer of the party upon whom the same is served, is proof against him, unless it be signed by each party."

2. With the exception of this notification, summonses, protests and services may be made by an ordinary notarial deed, signed in the office of the notary, to serve a copy of such deed upon the person to be so notified, summoned or protested at his domicile.

It is not necessary to deliver to the adverse party a copy of the *procès-verbal* of service; such *procès-verbal* may be drawn up and signed afterwards." Q. 47 Vict. Cap. 14. See 1. This act shall come into force on the day of its Sanction, Sec. 2.

## VI. SUBROGATION.

11. The plaintiff was the purchaser of an immovable property on which there was an hypothec, duly registered, and on which the husband of the defendant in his lifetime, bound himself as *caution solidaire*. The plaintiff having purchased this property paid off the obligation and obtained a subrogation in the rights of the creditor. The subrogation was duly notified to the defendant, and in the month of December, 1880, instituted action to recover the amount. The defendant pleaded that the creditor, on being paid, had no powers to subrogate and the subrogation was consequently null. The plaintiff on the contrary cited Arts. 1156, 1157 et 1941 of the Civil Code and the introduction to the *Coutume d'Orléans* by Pothier. *Held* that the acquittance that the creditor had given to the plaintiff and the consequent discharge of the obligation discharged the surety who if she were compelled to pay could not in turn be subrogated in his rights, and that in any case her rights *ex-caution* even *ex-caution solidaire* must be preferred to his. *Bilodeau & Giroux*, 7 Q. L. R., 73, S. C. 1881.

## OBSTRUCTION.

I. OF NAVIGATION, *see* MARITIME LAW.

## OFFENCES.

I. AGAINST THE PERSON, *see* CRIMINAL LAW.II. JURISDICTION OUSTED BY PLEA OF RIGHT, *see* CRIMINAL LAW PLEA OF RIGHT.OFFICERS OF MILITIA—*See* MILITIA LAW.

## OFFICIAL NOTICE.

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## OPPOSITION.

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## II. AFIN DE CONSERVER.

## III. CONTESTATION OF.

## IV. COSTS OF.

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## VI. DISMISSED AS FRIVOLOUS.

## VII. ELECTION OF DOMICILE.

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## X. MERITS OF CANNOT BE TRIED ON MOTION.

## XI. MOTION TO DISMISS.

## XII. PLEADING IN.

## XIII. REGISTRATION OF.

## XIV. TO JUDGMENTS.

## XV. TO SALE OF IMMOVEABLES.

## I. AFFIDAVIT WITH.

12. The affidavit to an opposition for judgment was in the following terms: "*que tous les faits allégués en l'opposition ci-dessus et des autres parts écrits sont vrais et que la dite opposition n'est pas faite dans le but de retarder injustement l'exécution du jugement rendu en cette cause, mais qu'elle est faite dans le*

*seul but d'obtenir justice.*" Held, to be sufficient and that the words, to his knowledge, were unnecessary. *Desrochers & Crilly*, 12 R. L. 315, S. C., 1883.

## II. AFIN DE CONSERVER.

13. Money paid by the defendant to the seizing officer to prevent a sale of his effects in money "levied," within the meaning of C.C.P. 601 (1), and must be returned into Court where an opposition *afin de conserver* is filed before paid over. *Martin & Labelle*, 7 L. N. 174, S. C., 1884.

## III. CONTESTATION OF.

14. Where an opposition is made to the sale of real estate under execution, founded on title registered before the date of the seizure, the plaintiff may attack the opposant's deed as simulated without concluding for its rescission. *La Banque Nationale & Joly*. 7 L. N. 214, Q. B. 1884.

## IV. COSTS OF.

15. Opposition founded on title to the real estate seized. The seizure was of date 1st April, 1880, and the opposant's title was not registered until 21st July of same year, though executed some two years previously. Evidence that plaintiff, before seizure, knew or had heard from different persons that the opposant who was the son of the defendant, claimed the land as belonging to him. Evidence also that the affairs were mixed up a good deal. Held, following *Moffette & Moffette*, (2) maintaining opposition but with costs against opposant, on the ground that the plaintiff was justified in seizing so long as the opposant's title was not registered. *Doreau & Bourassa*, 7, Q. L. R. 303, S. C. 1881.

## V. DELAY FOR FILING.

16. Plaintiff moved to reject an opposition *afin d'annuler*, on the ground that it was filed on the 14th day before the day fixed for the sale, contrary to Art. 652 of the Code of Procédure, (3) the 15th day having been a legal holiday. Held following *Price & Ross & Ross*.

[1] The money seized or levied, after deducting the duties thereon and taxed costs, may be paid by the sheriff or bailiff four days after the sale, to the seizing creditor, if no opposition for payment has been placed in his hands; otherwise, he must return them into Court, to await such judgment as to right shall appertain. 601 C. P. C.

(2) Unreported.

(3) Every opposition to the seizure and sale of immoveables or rents must be filed at the latest in the 15th day before that fixed for the sale. No opposition filed after this period can stop the sale. 652, C. C. P.

(1) that the fifteenth day having been a holiday, the delay was by Art. 24 C. C. P. extended to the following juridical day. *Boivin & Welch*, 7 Q. L. R. 293, S. C. 1881.

#### VI. DISMISSED AS FRIVOLOUS.

17. A judge of the Superior Court exercises his discretion wisely in setting aside an opposition to a seizure based on the fact that the costs had been taxed erroneously ten cents too high, and a judgment in Review reversing such judgment in first instance, will be reversed in appeal. *Côté & Samson*, 12 R. L., 112 & 5 L. N. 421. Q. B., 1882.

#### VII. ELECTION OF DOMICILE.

18. Une opposition afin de distraire pourra être rejetée sur motion à cet effet si elle ne contient pas, de la part de l'opposant, une élection de domicile dans un rayon d'un mille du palais de justice. *McGreevy vs. Charleson*, 10 Q. L. R. 114, 1884.

#### VIII. FORMALITIES IN.

19. On an *exception à la forme* to an opposition—*Held* that it is not essential for the person who makes the affidavit in support of the opposition, to have been authorized to do so. *Lamnière & Lebel*, 9 Q. L. R. 337, S. C.

20. That in said opposition, an election of domicile at the office of an attorney who has registered his election of domicile at the prothonotary's office is sufficient. *Ib.*

21. That the omission of approving a certain number of words forming part of an affidavit is an irregularity, but will not vitiate the affidavit, should the latter be good without the words not approved of. *Ib.*

22. That the words "Com. Cour Sup. Québec," were sufficient in the present instance. *Ib.*

23. That an affidavit bearing date several months before the opposition is null. *Ib.*

#### IX. GROUNDS OF.

24. To the seizure of a certain immoveable property by a mortgagee, the opposant filed opposition on the ground of an authentic lease to him of the property, duly registered. *Held* that as the lease conferred no right of property and created no real charge upon the property leased, that it could form no ground of opposition to the seizure. *Desjardins & Gravel & Langevin*, 25 L. C. J. 105, S. C., 1880.

25. Application by opposant to be allowed to file an opposition to a *venditioni exponas* of real estate. He had filed a first opposition on the 16th day, before the day fixed for the sale, and the opposition had been rejected on the ground that it was not accompanied

by the deed referred to in the opposition and forming the grounds thereof. The facts were that plaintiff obtained judgment against the defendant, in 1878, for \$12,480, and took the lands in question in execution on the 25th November. The defendant had given a deed of them to opposant on the 19th October, 1880, and the deed was registered on the 9th November, some two weeks before the seizure. *Per curiam*.—It would be the duty of the Court to come to the aid of the opposant if his demand were *bonâ fide* and had any chance of being maintained. On this the parties are referred to *Hans dit Chaussée vs. D'Odé dit d'Orsonnens*, and C. S. L. C. Cap. 47 and Art. 2074 C. C. (1) The lands were hypothecated to the plaintiff and within six weeks before the seizure by the sheriff, the defendant executed a deed to opposant. The aim is manifest. It is an obstruction of the course of justice and could only avail to gain time. Motion dismissed. *Hadley & O'Brien*, 4 L. N. 101, S. C., 1881.

26. A defendant who has made partial payments on account of the judgment, can file an opposition claiming to have the judgment reduced, but has no right to demand the total nullity of the seizure. *Thibault & Fontaine*, 7 Q. L. R. 320, S. C., 1881.

27. An opposition on the ground that neither the *fiat* for a writ of execution nor the entry book contained the day of return was dismissed. *DeBellefeuille v. Pollock*, 25 L. C. J. 104, S. C., 1881.

28. Where moveables have been sold at judicial sale, and the purchaser in good faith had allowed the effects to remain in the defendant's possession, he, or his representatives, may oppose the seizure and sale of such effects at the suit of another creditor. *Senecal & Crawford*, 5 L. N. 256 & 2 Q. B. R. 120, Q. B., 1881.

29. The purchaser of effects at a judicial sale who leaves them in the hands of the defendant may, in the absence of fraud, prevent their sale by opposition at the suit of another creditor of the defendant. *Massie & Rhéaume*, 11 R. L. 471, S. C., 1882.

30. The plaintiff having judgment against defendant, seized, as belonging to him, six shares in the Quebec Street Railway Co. in the Company's hands. The wife of defendant opposed on the ground that the shares seized had been given to her by her marriage contract which was registered. The marriage contract was long prior to the debt of the plaintiff. The plaintiff contested on the ground that the shares still stood in the name of defendant in the company's books, and the defendant himself had paid the two last calls, subsequent to the date of the marriage contract, and received the dividends. *Held*, that in the absence of a rule of the company, or a clause of the statute requiring a change of the name in the books that the shares must be considered the property of wife. *Whitehead & McLaughlin*, 8 Q. L. R. 373, S. C. R., 1882.

31. Appellant seized certain immoveable property in the name of A. McC., curator to the succession of the late J. B. Respondants opposed, claiming part of the property seized, *Held*, that the opposition declared null as being made *super non possidente* under arts. 546-553 and 632 C. C. P. *Tempest & Baby*, 2 Q. B. R. 371, Q. B., 1882.

32. Where the plaintiff omitted to give credit for moneys received on account.—*Held*, that the defendant was entitled to file an opposition to prevent the sale for more than the amount due. *Martin & Labelle*, 7 L. N. 174, S. C., 1884.

33. Opposition *afin d'annuler* by wife, based on a donation by her husband in a marriage contract, entered into nine days after action brought was in two cases of a similar nature dismissed, on the ground that the donation was made in fraud of the creditors of the husband. (1) *Behan & Erickson*, 7 Q. L. R. 295 S. C., 1881, & *Holliday & Conscience*, S. C., 1884.

34. In another case, the opposant was daughter of the defendant and based her opposition on a previous judicial sale of the things to her. That sale was advertized in the first place for eight o'clock in the morning of the 30th December, but was afterwards changed to ten on the representations of the plaintiff. The plaintiff, in the first case, had been paid his claim but consented that the action should proceed to judgment and sale to oblige the defendant. The sale was held in defendant's parlor and included a horse and carriage which was not shown at all. There were present only the plaintiff in the former case, the defendant and the bailiff. The things were all entered as having been sold to defendant's daughter, who was not present, at merely nominal and ridiculous prices. *Held* to be a mockery and not a sale such as could convey any title. *Hingston & Larue*, 7 Q. L. R. 301, S. C., 1881.

35. Effects purchased *bonâ fide*, at a judicial sale, and left in the possession of the defendant by the purchaser or his transferee, may be claimed by the owner and the sale thereof prevented, if such effects are seized at the suit of another creditor of the defendant. *Ste. Marie & Aitken*, 7 L. N. 119, S. C. R., 1884.

36. An opposition founded on the nullity of the seizure by lapse of the delays is good, notwithstanding the defendant freely agreed to the suspension. *Denault & Pratt*, 7 L. N. 414, C. C., 1884.

#### X. MERITS OF CANNOT BE TRIED ON MOTION.

37. On a motion to dismiss an opposition as unfounded. *Held*, could not be tried on motion. *La Banque Jacques-Cartier & Neveux*, 7 L. N. 338, S. C., 1884.

[1] *Vide* DONATIONS IN FRAUD OF CREDITORS.

#### XI. MOTION TO DISMISS.

38. Appeal from a judgment dismissing an opposition *afin de distraire* made by the guardian to the things seized. Appellant pretended that his opposition which had been received by the sheriff, on the order of a judge, given *ex parte*, should not be dismissed on motion. *Held*, that the motion was perfectly regular and that the Court had the right to revise the order of a judge given in chambers *Exp. Pepin & Desmarceaux*, 1 Q. B. R. 123, 1880.

39. Motion on the part of plaintiff *afin d'annuler*, filed by the defendant, on the ground that the opposition was frivolous and vexation as appeared on its face. In the Court of first instance, the motion was granted on the ground that the opposition was not accompanied by a judge's order, that several words were omitted among others the words *de bonne foi* in the affidavit, and on the ground that the matters of fact alleged were grounds of *requête civile* and not of opposition. In appeal, the Court, after pointing out that oppositions may be attacked on motion on grounds of preliminary exception according to Art. 135 C. C. P., (1) did not think themselves justified in disturbing the judgment in question. *Felton & Belanger*, 27 L. C. J. 79, Q. B., 1882.

#### XII. PLEADING IN.

40. Opposition on the ground that the land seized was hypothecated to opposants, by the father of defendant, who had since died, leaving a wife and five children. That he had been *commun de biens* with his wife, and that consequently, defendant owned only a tenth. They asked therefore that the seizure be declared null. Demurred to on the ground that the opposition should only have demanded the nullity of the seizure for the part of the land not belonging to defendant and not for the totality. *Held* following *La Société Métropolitaine & Pitre dit Lajambe* (2) that the demurrer should be maintained as to a tenth. *Club Canadien & Beaudry*, 4 L. N. 131, S. C., 1881.

#### XIII. REGISTRATION OF.

41. Where an opposition was neither stamped nor entered until after service, a motion to dismiss on that ground was rejected. *Smardon & Hamilton*, 6 L. N. 149, S. C., 1883.

#### XIV. TO JUDGMENTS.

42. Where judgment has been obtained

(1) Grounds of preliminary exception may, in certain cases, be urged by motion, according to the practice of the courts. 185 C. C. P.

(2) Unreported.

without service against the party defendant, the proper remedy is by tierce opposition and not by *requête civile*. *Hall & Harrison*, 4 L. N. 325, C. C., 1881.

Every party condemned by default to appear or to plead may proceed against the judgment whether rendered in term or in vacation, by opposition, according to Art. 484 and following of the Code of Civil Procedure; but no opposition shall be allowed in such case, unless the party condemned produce an affidavit, that such party has a good defense to the action, which defense shall be set out in the opposition, and unless such party has been prevented from filing his defence, by surprise, fraud or for other causes, which shall be, by the judge, considered just and sufficient. Q. 46 Vict. Cap 26 Sec. 4.

#### XV. TO SALE OF IMMOVEABLES.

43. An opposition to a sheriff's sale of immoveables, accompanied by a judge's order filed within the fifteen days proceeding the day fixed for such sale, has the effect of legally stopping the sale. *Heritable Securities and Mortgage Investment Association & McKinnon*, 27 L. C. J. 345, S. C., 1883.

### OPTION.

I. OF JURY IN CIVIL CASES See JURY.

II. WHEN MADE See CONTRACTS, INTERPRETATION OF.

### ORANGE ASSOCIATIONS.

I. LIABILITY OF.

44. The Loyal Orange Institution is an illegal Association, combination and confederacy the members being bound by an oath to keep secret the proceedings of the association. (1) *Grant & Beaudry*, 4 L. N. 394, Q. B., 1881.

### ORDERS IN COUNCIL.

I. NOT RESPECTING ORDERS IN COUNCIL BELONGING TO THE LATE PROVINCE OF CANADA. See Q. 44 & 45 Vic, Cap 5.

### OWNERSHIP.

I. BY ACCESSION.

45. Action of revendication to recover 200 cords of tamarac, and 200 cords of other soft

wood, cut by defendants upon land belonging to her. The value of the tamarac was set down at \$1.00 per cord and that of the other wood at 90 cents. The defendants pleaded they purchased in good faith, the right to cut the wood from one N., whom they believed and who believed himself to be the owner of the land; that the wood before it was cut was only worth \$50.75 in all, and that the plaintiff had suffered no damage beyond that value, and that they had confessed judgment for \$75 as per confession of judgment filed. They also pleaded that by converting the standing trees into cord wood and carting it to where they did they had added \$300 to the value of the wood and had a right to retain it until they were reimbursed the said sum; that the plaintiff had not offered to reimburse them and that the action therefore should be dismissed. Judgment for \$75, interests and costs, as confessed, seizure set aside and action dismissed as to balance. *Hall & Hould*. 7 Q. L. R. 31. S. C., 1880.

46. The defendant was sued for \$2,875 as the value of a quantity of timber which the plaintiff alleged had been cut from his land; the Defendant pleaded that he had been in possession of the land for more than ten years and that had he cut the timber in good faith, believing the land to belong to him. The original value of the timber was only \$300, but had been increased in value by labour and improvements. Held on proof that where the value of the improvements exceeded the original value of the material that the defendant had a right to retain it on paying such original value. *Rayner & Thompson*. 12 R. L. 150, Q. B., 1882.

47. Le demandeur possédait un moulin à scies dans le canton Simpson, et le lot No. 22 du cinquième rang, du même canton, les défendeurs étaient propriétaires de moulins considérables à Pierreville, et du lot 23, voisin dans le même rang de celui du demandeur. Celui-ci faisait des billots sur son lot pour M. Ross et pour lui-même, en gardant pour lui que les billots que ne voulaient pas accepter les inspecteurs de M. Ross. Les défendeurs coupaient des billots sur le lot 23 pour leur propre compte, par des entrepreneurs auxquels ils payaient la coupe et le transport sur le bord de la rivière, à raison d'un prix déterminé par cent billots. Il n'y avait pas de ligne apparente entre les deux lots sur toute leur profondeur. L'agent des défendeurs proposa au demandeur de la faire tirer par un homme d'expérience qui n'était pas un arpenteur. Il y consentit à la condition que la ligne fut correcte. Cette personne tira en Décembre 1881, une ligne en l'absence du demandeur, qui à son arrivée, une couple de jours après, se rendit sur les lieux et s'apercevant que la ligne entraînait considérablement chez lui, il alla de suite faire défense aux personnes qui coupaient des billots pour les défendeurs d'en couper plus près que la distance qu'il réclamait. Il fit aussi écrire au gérant des moulins des défendeurs qu'il ob-

(1) Although this case was carried to the Supreme Court no opinion was expressed there as to its merits. As in the Courts below it was dismissed on the question of the insufficiency of the notice. Ed.

... voulait une par ar-  
... après que la ligne a  
... coupé sur le terrain  
... plus tard, par l'arpentage  
... être celui du demandeur.  
... de 89 billots d'épi-  
... pin. Les défendeurs préten-  
... demandeur n'a pas identifié les  
... comme étant ceux coupés sur sa  
... la coupe des billots et les trans-  
... ou ils ont été saisis vaut plus  
... sur pied, qu'ils en sont par là de-  
... propriétaires et que le demandeur ne  
... leur valeur sur pied. *Jugé*, (1)  
... application de la règle que fait l'ar-  
... du Code Civil n'est ni correcte,  
... ni raisonnable. Cet article ne fait  
... l'industrie, la partie principale de l'accession  
... la chose employée, que lorsque la main-  
... d'œuvre qui a produit une chose d'une nou-  
... espèce, surpasse de beaucoup la valeur  
... la matière employée; et que la revendi-  
... des billots mêlée avec ceux de même  
... coupés sur une terre voisine et portant  
... la même marque n'exige pas d'autre identifi-  
... que celle des diverses espèces et des  
... revendus. *Allard & Tourville*, 8  
Q. L. R. 237, S. C. R. 1882.

[1] *Suivant les causes de Glover & Porrigan et  
Sullivan & Blackus non rapportées.*

48. Action in revendication of 250 cords of shingle wood, for cedar butts, valued at \$125. The respondent, a lumber dealer, held under license from the Dominion Government, certain lots in the third range north east to the townships of Strafford, with the right of cutting timber growing thereon. In the winter of 1879-80, as he alleged, a quantity of cedar was cut by trespasser and brought to the appellant's mill, where it was partly converted into shingles. The respondent, on learning this, caused the timber to be seized. The defense was that the shingle wood had been purchased in good faith. *Held*, confirming the judgment of the court below (11 R. L. 436 & 5 L. N.) 185, that Art. 435 C. C. (1) does not declare that the property in material belonging to another, is transferred to the workman when the added workmanship is so important that it greatly exceeds the value of the material. The workman has only the right of retaining the thing on paying the owner the price of the material, and thus becoming the owner. *Beard & Miliken*, 6 L. N. 382, Q. B. 1883.

[1] If however the workmanship be so important that it greatly exceeds the value of the material employed, it is then considered as the principal part, and the workman has a right to retain the thing, on paying the price of the material to the proprietor, 435 C. C.

# P

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## PARCELS.

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## PARENTS.

I. CANNOT SUE ON BEHALF OF MINOR CHILDREN WITHOUT TUTORSHIP.

II. LIABILITY OF FOR WRONGS COMMITTED BY THEIR CHILDREN.

III. RIGHTS OF CHILDREN.

IV. RIGHTS OF WITH REGARD TO CHILDREN.

I. CANNOT SUE ON BEHALF OF MINOR CHILDREN WITHOUT TUTORSHIP.

1. Where a mother sued for damages alleged to have been caused to her minor child, without first being appointed tutrix. *Held* that she had no status. *Wilhelmy & Brisebois*, 6 L. N., 276 & 27 L. C. J. 175, C. C. 1883.

II. LIABILITY OF FOR WRONGS COMMITTED BY THEIR CHILDREN-

2. An employer or parent is responsible for a trespass committed by his children or by persons employed by him or under his control where he fails to establish that he was unable to prevent the act. *Gravel & Hughes*, 7 L. N. 32, S. C. 1883.

III. RIGHTS OF CHILDREN.

3. A son who continues to live with his father after his majority, and to do work for him at a trade which he has learnt with his father, has not the right, when he leaves and marries, to claim a salary from his father for the time he remained with him, unless at least he proves an agreement for which the father undertook to pay him such salary. *Leblanc & Tellier*, 11 R. 341, S. C. 1882.

IV. RIGHTS OF WITH REGARD TO CHILDREN.

4. Petition presented to the Court by a husband against his wife, for an order to permit him to see his children. An action *en séparation de corps* had been instituted by the wife against her husband, and decided in her favour on the 23rd of June, 1883, giving her the custody of the child among other conclusions taken by her. A preliminary point was now before the Court, whether by a summary petition, without a writ of summons, the Court had jurisdiction in the matter. The petition was not made in a pending cause. His Honor observed: This Court decided on the 23rd February last (*See ex parte Daoust*, 7th Legal News, page 69) that it had no jurisdiction without a writ of summons to proceed summarily to remove a tutor for misconduct in his office. The same rule should apply here. The court would further refer counsel

to the following authorities with reference to the relations of husband and wife, to each other, and the interference of the Court between them:—4 *Demolombe*, p. 129, No. 108; *Sirey*, Colmar A. D. 1833; A. D. 1834, 2, 127; J. P. 1857, 879; *Sirey*, A. D. 1862, 1, 128; J. P. 1865, 116; *Sirey*, 1867, 1, 212; 1868, 1, 208. The petition was dismissed. *Petit & Delisle*, S. C. 1882.

## PARISHES.

I. ELECTION OF.

5. Dans l'érection de paroisses canoniques, l'Evêque diocésain n'est soumis qu'à ses supérieurs ecclésiastiques, et que les tribunaux civils n'ont aucun contrôle soit quant au fond, soit quant à la forme des decrets. *Ouimet & Cadot*. 7 L. N., 415. C. C., 1884.

## PARLIAMENT.

I. INDEPENDANCE OF *See* C. 47 VICT. CAP 14.

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## PAROISSES.

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## PARTITION.

I. ACTION TO SET ASIDE DEED OF.

II. OF PARTNERSHIP PROPERTY, *see* PARTNERSHIP.

III. RIGHT OF.

I. ACTION TO SET ASIDE DEED OF.

6. Action by a sister to set aside a deed of partage of the succession of a late brother. The brother deceased had been, prior to his



death, in partnership with the brother against whom the action was directed and who was charged with having made the inventory by misrepresentation and fraud. The plaintiff it appeared had signed the deed of partition along with all the other members of the family and had acquiesced in it for nine years, when she married, and it was only subsequent to her marriage that she thought of attacking the deed. On the evidence the Court of appeal reversed the judgment and dismissed the action. *Charlebois & Charlebois*. 5 L. N. 421, Q. B., 1882.

### III. RIGHT OF.

7. Under Art. 743. C. C. the right to a separation of patrimony constitutes a privilege and may be exercised on the property of the heirs or of the universal legatees and even on the proceeds of the licitation, if it is still unpaid and no judicial demands, either principal or incidental is necessary to give the creditors the right to the separation as they may exercise that right, at the distribution of the moneys from the succession of the deceased by simple opposition. (1) *Backand & Bisson*. 12. R. L. II. S. C., 1881.

8. The plaintiff seized, as belonging to the defendant, five immoveables. The opposant, her son, alleged that four of these immoveables belonged to the community between the defendant, his father and the mother, and that he and his six brothers and sisters, were owners of an undivided half, his share being a fourteenth, that he had sued the defendant for partage en licitation and asked that the four immoveables be relieved from the seizure. *Held* that the co-heir of a community under such circumstances, could ask that the seizure be suspended until after the conclusion of the partage, but could not ask for the distraction of the immoveables seized. *Hôpital Général & Gingras*. 10 Q. L. R. 136, S. C. R., 1884.

## PARTNERSHIP.

### I. ACCOUNTS BETWEEN PARTNERS

### II. ACTION AGAINST PARTNERS.

### III. ACTION TO ACCOUNT.

### IV. COMMERCIAL.

### V. COMPENSATION OF DEBTS DUE TO.

### VI. LIABILITY OF FOR ACTS OF PARTNERS.

### VII. LIABILITY OF PARTNERS DURING PARTNERSHIP.

### VIII. LIABILITY OF PARTNERS AFTER DISSOLUTION.

(1) Creditors of the deceased and his legatees have a right to a separation of the property of the succession from that of the heirs and universal legatee, or legatees under general title unless there is novation. This right may be exercised as long as the property exists in the hands of the latter, or upon the price of the sale, if it be yet unpaid. 743 C. C.

### IX. LIQUIDATION OF.

### X. PARTITION OF PARTNERSHIP PROPERTY.

### XI. PROOF OF EXISTENCE OF.

### XII. REGISTRATION OF.

### XIII. RIGHTS OF PARTNERS AFTER DISSOLUTION.

### XIV. RIGHTS OF PARTNERS BETWEEN THEMSELVES.

### XV. TRANSFER TO PARTNERS FOR BENEFIT OF FIRM.

### I. ACCOUNTS BETWEEN THEM.

9. The partner who alone has had the management of the affairs of the firm cannot, after a dissolution, claim from the other a balance due, except he render an account with his action or has already rendered it, in which case if the account rendered has been accepted by his former partner and is found to contain an error, the only action which the parties have one against the other is in reformation of such account. *Blais & Vallières*, 10 Q. L. R. 382, S. C. R. 1884-

### II. ACTION AGAINST PARTNERS.

10. The plaintiff sued the two defendants, of whom one was his brother, as members of the firm of A. P. & Co. then dissolved, for the recovery of a promissory note which he alleged had been made by the partnership in his favor.—*Held* that an action on a note signed by a firm may, without any other special allegation, be maintained against one of the partners, although it be established during the defense of the other partner, that the firm received no consideration for the note. *Rochette & Rochette*, 10 Q. L. R. 342, S. C. R. 1884.

### III. ACTION TO ACCOUNT.

11. Les parties ont été en société comme avocats ou procureurs, et ils ont eu, en même temps, une agence d'assurance. Ils ont dissout leur société, et R., le demandeur, alléguant que le défendeur G. avait reçu des sommes d'argent pour la société, l'a poursuivi en reddition de compte. G. a opposé à cette demande plusieurs exceptions, mais il a été finalement condamné à rendre compte dans un délai d'un mois, sinon, à payer une somme de \$1,500 au demandeur. *Jugé*, que lorsqu'un associé poursuit un autre associé, en reddition de compte, il n'est pas obligé d'alléguer qu'il a lui-même rendu compte, ou qu'il n'en a pas à rendre, il lui suffit d'alléguer que le défendeur a en sa possession des biens ou sommes de deniers appartenant à la société qui a existé entr'eux, dont il n'a pas rendu compte. *Roy & Gauthier*, 1 Q. B. R. 96, Q. B., 1880.

12. Et qu'à défaut, par le défendeur, de rendre compte dans le délai fixé par le jugement qui lui a ordonné de rendre compte, le demandeur peut procéder à établir lui-même un compte d'après l'article 533 du Code de Procédure Civile, ou il peut, suivant la pratique suivie avant le Code, faire condamner le

défendeur à lui payer, soit une ou plusieurs provisions, jusqu'à ce qu'il lui ait rendu compte, soit une somme définitive pour obtenir la reddition de compte, à la discrétion de la Cour. *Ib.*

#### IV. COMMERCIAL.

13. Action to collect an account of \$370.80, for printing done in the *Official Gazette*, &c., directed against the defendant, in part, for his individual debt, and in part as being jointly and severally liable as partner with C. J. D. *Held*, that persons doing business under a firm name as assignees and brokers are jointly and severally liable for the debts of the co-partnership. *Loranger & Dupuy*, 5 L. N. 179, S. C., 1881.

#### V. COMPENSATION OF DEBTS DUE TO.

14. Where a person, after the dissolution of a partnership, is sued for an amount due, he may set up in compensation a debt due him by one of the partners. *Gauthier & Lacroix*, 12 R. L. 508, Q. B., 1868.

#### VI. LIABILITY OF FOR ACTS OF PARTNER.

15. Action to recover \$2,200 and interest, alleged to have been deposited with defendants, in May, 1875. The evidence of the deposit was a receipt signed by a member of the firm in the name of the firm. The evidence showed that the money was placed with the funds of the firm and was credited to the member who received it in trust in the books of the firm. He it was who managed the finances of the firm, and he said that he withdrew the money, but afterwards replaced it. *Held*, that the firm was liable to repay it. *Brown & Watson*, 4 L. N. 404, S. C., 1881.

16. In an action by advocates for law costs in a case where the defendant was plaintiff. *Held*, that where parties contract with one party personally, they have no recourse against the partnership, even though it has benefited by the act of the partner, where it is shown that there was no intention on either side to bind the partnership, and in any case, where a partner sues in his own name for a claim due to the partnership, he does not bind the partnership to the costs of the action. *Béique & Dumond*, 12 R. L. 436, S. C., 1883.

17. And in another case—*Held* that a creditor has no right of action against a partnership only in so far as the partner, with whom he has dealt, has given himself out as acting for the partnership, and if he has contracted in his own name, without speaking of the partnership, the creditor will have no recourse against them. *Graham & Bennett*, 12 R. L. 448, S. C., 1883.

18. And where a person does business in the name of another but for himself, he is himself only responsible for the debts which he contracts. *Ib.*

#### VII. LIABILITY OF PARTNERS DURING PARTNERSHIP.

19. In an action of damages for not having furnished certain machines to the partnership of which plaintiff was a member. *Held* Que la stipulation dans une acte de société qu'un des associés fournira au plus tôt certaines machines pour les opérations de la société doit s'interpréter de manière à donner à cet associé un temps raisonnable pour exécuter son obligation. *Pelletier & Rousseau*. 9 Q. L. R. 186, S. C., 1882.

20. Et que dans l'espèce les demandeurs n'ont pas établi leur droit à des dommages. *Ib.*

#### VIII. LIABILITY OF PARTNERS AFTER DISSOLUTION.

21. Plaintiff brought his action to recover the value of the hire of some cars used in constructing a railway. The plea was a general denegation. The defendant was condemned to pay only a part of the amount demanded, but he inscribed in review on the ground that the hire having been made to the late firm, of which he was a member, there should be proof that he had assumed the obligation of the firm. *Held* that the members continued to be jointly and severally liable. *Gordon & McDonald*, 4 L. N. 133, S. C. R. 1879.

22. The plaintiff transferred to the defendant all his rights in commercial partnership which had existed between them, on condition that the defendant would pay him \$3000, that he would pay all the debts of the partnership and also all the personal debts of the plaintiff and that until payment of the \$3000, he would keep the goods insured in favor of plaintiff. The goods were at the time of the transfer, insured in the name of the plaintiff only, in two mutual Insurance Company by three policies shortly to expire and which plaintiff renewed at their expiration. Plaintiff and defendant subsequently made a settlement of this account and gave each other a mutual discharge. *Held*, that the transfer of the goods did not transfer the policies of Insurance, nor cover goods subsequent to the transfer in which plaintiff had no insurable interest, that defendant was not liable for contribution for losses previous to the expiration of the policies, but those subsequent to the renewal of the policies were due only by plaintiff, without recourse to the defendant, and that in short plaintiff had recourse against the defendant only for such assessments for losses, anterior to the expiration of the policies which had not been made known to them at the time of the settlement of accounts. *McDonald & Messier*. 10 Q. L. R. 329, S. C. R., 1884.

23. The defendants were hotel keepers at Montreal, carrying on business under the firm of "P. A. & Co." The plaintiff, a judgment creditor of the firm, caused the effects of G. one of the partners, to be seized at his domicile. G. opposed the seizure on the ground

that his individual property could not be seized under a judgment against the firm for a debt of the firm. It was also alleged that the notice of sale was irregular. The plaintiff contested the opposition, alleging that the firm was dissolved, and had no known place of business nor assets, and that the defendants were jointly and severally liable. Opposition dismissed. *Carmel & Asselin*. 28 L. C. J. 28 & 7 L. N. 150, C. C., 1884.

#### IX. LIQUIDATION OF.

Art. 1543 of the Civil Code is amended by adding thereto the following paragraph "In the case of Insolvency such right can only be exercised during the fifteen days next after the delivery." Q. 48 Vict. Cap. 20 Sec. 1.

Art. 1896 of the said Code is amended by adding thereto the following paragraphs: "If a partnership be dissolved or a judicial demand be made for such dissolution, the court or the judge, upon the demand of one of the partners, after notice given to the others, has power to appoint one or more liquidators. The liquidators so appointed shall be sworn to well and faithfully perform the duties of their office; They immediately give notice of their appointment by an advertisement to that effect published in the *Quebec Official Gazette*, and in two newspapers, one in the French and the other in the English language, published at the place of business of the partnership or at the nearest place and in such other manner as the court or judge may prescribe. They become *plene jure*, seized of the assets of the partnership for the purpose of the liquidation, they furnish the security prescribed by the Court or Judge, and are in all respects subject to the summary jurisdiction of such court or judge. They possess all the powers, and are subjected to all the obligations of judicial sequestrators, with the exception of putting into possession, which is done without the intermediary of a bailiff. Acts exceeding those of administration, cannot be performed by the liquidators, without the consent of all the partners, and in default of such consent, only with the approval of the court or judge, after previous notice to the members of the partnership. The remuneration of the liquidators is fixed by the court or judge. Proceedings respecting the appointment of liquidators, and the performance of the duties of their office are summary. Provisional executions takes place notwithstanding the appeal, saving the right of the Court to which the cause is taken in appeal to summarily suspend such execution. Two judges of the Court seized of the appeal, may also give such order for suspension after notice to the adverse party. Sec. 2.

#### X. PARTITION OF PARTNERSHIP PROPERTY.

24. In a division of common property between partners M. one of the partners agreed to take certain shares as his interest in a transaction, but in consequence of a claim by a third party (which was a partnership liability) their shares passed into other hands and could not be delivered to M. *Held*, that under the agreement between the partners. M. was entitled to have his portion made good out of the partnership assets, and the value of the shares not delivered to him should be calculated as at the time of the partition or agreement between the partners

settling their respective rights. *Macdougall & Prentice*, 7 L. N. 162 & 28 L. C. J. 169, Q. B. & 8 L. N. 163, P. C. 1885.

#### XI. PROOF OF EXISTENCE OF.

25. Action in which the plaintiff alleged that in December, 1878, the Government of the Province of Quebec, having invited tenders for furnishing the Normal School, he sought to induce the defendant to join him in co-partnership for the purposes of the contract, the plaintiff to do the work and the defendant to furnish the money required to purchase the materials and pay the wages of the journeymen, the profits to be divided. The defendant drew \$18,895.59 from the Government, on which there was a clear profit of at least \$12,000, of which he has not rendered any account to the plaintiff, and now the plaintiff sues for an account. The defendant denies that he never made any co-partnership with the plaintiff, that the contract was taken in the name of the defendant alone, and the work was executed by the defendant, the plaintiff being his employee; that on the representations of the Prime Minister of the Province of Quebec for the time being that the defendant was not skilled in that business, the latter knowing the plaintiff's ability, secured his services to carry out and superintend the cabinet-makers' work, and after paying him a salary he would credit him with one-half of the profits on the different sums which he owed him; that there was no agreement that the plaintiff should be responsible for the debts or losses resulting from the contract. The plaintiff, it is alleged accepted the defendant's offer. *Per curiam*.—The admission of the defendant, under the circumstances, cannot be divided. It is in accordance with the pleas filed by him. The plaintiff, not having any *commencement de preuve par écrit*, to establish the existence of a partnership between him and the defendant, neither the defendant's plea nor his deposition being sufficient to do so, cannot prove by witnesses the existence of such a partnership. Under these circumstances the question put to the witness is illegal and therefore the objection is maintained with costs. *Fratt & Berger*, 4 L. N. 341, & 28 L. C. J. 192, S. C. 1884.

#### XII. REGISTRATION OF.

The following provisions are added after the schedule to Cap. 66 of the Consolidated Statutes for Lower Canada, respecting partnerships:

8. Every person in the Province of Quebec who is, or hereafter may be engaged in business for trading, manufacturing or mechanical purposes, or for purposes of construction of roads, dams, bridges or other buildings, or for purposes of colonization or settlement, or of land traffic, and who is not and shall not be associated in partnership with any other persons, but who uses or shall use alone, or who uses or shall use his own name with the addition of "and Company" or some other words or phrase indicating a plurality of members under the said style, shall cause to be

delivered to the Prothonotary of the Superior Court of each district, and to the registrar of each county in which such persons carries on, or intends to carry on business, a writing, signed by such person.

9. Such declaration shall be in the form or in the terms of schedule A, annexed to this act, and shall contain the name, surname, quality and residence of such person, and the style or firm under which he carries on, or intends to carry on business, and shall also state that no other person is associated with him in partnership.

10. Persons now engaging in business under a style requiring registration, shall file such declaration within sixty days after the passing of this act, and those who, in future, shall engage in business under a similar style, shall deposit their declaration within sixty days of the time when such style is used.

11. The prothonotary and the registrar shall, as soon as received by them, and the costs of registration have been paid for, enter the declaration above mentioned, in the order of its filing in a registry book which they shall keep to this effect, which book shall at all time be gratuitously open to the public inspection. The prothonotary and registrar shall each be entitled to be paid by the person who shall deliver such declaration the sum of fifty cents for registering it, if it does not contain more than two hundred words, and the sum of five cents for each additional hundred words.

The fee shall be the same for every certificate required and delivered.

12. The registrar and prothonotary shall keep two indexes in the form of schedule B, annexed to this act, and they shall enter as soon as received, according to alphabetical and filing order: in the first column of one of these books, the style mentioned in the declaration delivered to them, in the record column the name of the person; in the third column the date of the filing of the same.

13. All changes in the style mentioned in such registered declaration, shall be also registered in the same manner; it shall be the same when the person shall cease carrying on business under such style, or using such style that he had registered.

14. Every person, failing to comply with the provisions of this act, shall be liable to a fine of two hundred dollars, to be recovered before any Court of competent civil jurisdiction, by any person suing, as well in his own behalf as on behalf of Her Majesty. Half of such penalty shall belong to the Crown, for the uses of the Province, and the other half to the party suing for the same, unless the suit be brought, as it may be, on behalf of the Crown alone, in which case the whole of the penalty shall belong to Her Majesty, for the uses aforesaid.

15. The dispositions of the act to amend the laws in *qui tam* actions in Lower Canada (27-28 Vict., Cap. 43), shall apply to this act. Q. 43 Vict., Cap. 29, Sec. 1.

26. In an action *qui tam* for the non registration of a partnership.—*Held*, that one action for the \$200, would not lie against two partners jointly and severally. *Bernard & Gaudry*. 4 L. N. 385, S. C., 1881.

### XIII. RIGHTS OF PARTNERS AFTER DISSOLUTION.

27. The plaintiff demanded from the defendants \$3,488.86 which he said he advanced to them to purchase grain in connection with their business as partners. The defendant A. G. McB., denied the liability and set up that at the dates in question he was not partner with the other defendant, D. G. McB. *Held* that after dissolution of the partnership

one partner has no authority to borrow money in the name of the firm for the purpose of the partnership business. *McBean & McBean*. 6 L. N. 95, S. C., 1883.

### XL. RIGHT OF PARTNERS BETWEEN THEMSELVES.

28. Pendant plusieurs années les parties en cette cause ont été associé pour l'exercice de leur métier, menuisier et entrepreneur. Dans l'existence de cette société l'Appelant a entrepris avec les nommés Bourgoin et Lamontagne et en dehors de la société Berger & Métivier certains travaux pour lesquels l'intimé, par sa présente action, demande sa part des profits alléguant que l'Appelant n'avait pas le droit d'entreprendre des travaux pour son seul bénéfice. *Jugé*:—10. Que la société contractée entre les parties en cette cause était une société limitée aux seuls ouvrages qui seraient entrepris avec l'assentiment des deux associés, et que chaque associé, aux termes de leur acte de société, était libre d'entreprendre, en dehors des affaires de la société, des travaux pour son bénéfice seul, et que lors même que l'intimé aurait un droit d'action, l'action en reddition de compte serait en tout cas prématurée, les travaux entrepris par l'appelant avec B. L., n'étaient pas terminés lors de l'institution de l'action ni lors de la contestation du compte qu'il a rendu à l'intimé. *Berger & Métivier*, 1 Q. B. R. 328, Q. B., 1881.

### XV. TRANSFER TO PARTNER FOR BENEFIT OF FIRM.

29. Where a mortgage was granted to one partner for the benefit of the firm, and by him transferred to the other partner, an action by the firm based on the mortgage was held good. *Lord & Bernier*. 4 L. N. 182, S. C. R. 1881.

## PASSAGE.

### I. RIGHT OF *See* SERVITUDES RIGHT OF WAY.

## PASSENGERS.

### I. RIGHTS OF *See* CARRIERS, LIABILITY OF RAILWAYS &c.

## PATENTS.

### I. ACT FOR PREVENTION OF FRAUD IN CONNECTION WITH THE SALE OF C. 47 VICT. CAP. 38.

#### II. ACTION TO SET ASIDE.

### III. AMENDING ACTS C. 45 VICT., CAP. 22, & C. 46 VICT. CAP. 19.

#### IV. FORMALITIES TO SECURE.

#### V. INFRINGEMENT OF.

#### VI. PROCEEDINGS IN REPEAL OF.

#### VII. RIGHT TO.

#### VIII. SALE OF.

## II. ACTION TO SET ASIDE.

30. Proceeding in the nature of a *scire facias* to set aside letters patent under the Act of the Parliament of Canada, 35 Vict. Cap. 26. The proceeding had been taken in the name of the Attorney General of the Province of Quebec, and objection was made that the action could only be legally brought in the name of the Attorney General of Canada. Action dismissed. *Attorney General & Bate*, 27 L. C. J. 153 & 6 L. N. 271 S. C. R., 1883.

## IV. FORMALITIES TO SECURE.

31. On the merits of an information by the Attorney General of Canada demanding the issue of a writ of *scire facias*. *Held*, that the omission to file a model of an invention for which letters patent are applied for without a dispensation from the commissioner of patents, from filing such model, is fatal to the validity of the patent. *Attorney General & Bate*, 6 L. N. 227, S. C., 1883.

## V. INFRINGEMENT OF.

32. Where the essential and principal parts of a patented machine have been imitated, such imitation will be held an infringement, notwithstanding dissimilarity in other less important points. *Lainer & Collette*, 5 L. N. 412, S. C., 1882.

33. Action of damages against the defendants for alleged infringement of plaintiff's rights, as inventor of a new key for water taps or cocks, to open and shut in their boxes, the cocks with double or multiplied openings, without possible mistake. Plaintiff obtained, on the 2nd October, 1873, letters patent under 35 Vic., Cap. 26, protecting his invention. He complained that the defendants, in July, 1879, proposed to buy the invention and borrowed the model and plans, and the written explanations in connection with the same, and used the invention without his consent. The demand was for an injunction against the defendants, forbidding them to use the invention, and for damages. The defendants pleaded that the system of stop cocks and keys used by plaintiff, and described in his so-called invention was not new and had been in use for a great number of years, that it was to be found in the letters patent granted to one Charles Dickson, in the United States, on the 22nd February, 1876. On proof, judgment for plaintiff and \$500 damages allowed. *Morin & Berger*, 6 L. N. 236, S. C., 1883.

## VI. PROCEEDINGS IN REPEAL OF.

34. Where the repeal of a patent is a principal object of the action, the proceedings should be by *scire facias*. 35 Vic., Cap. 26, Sec. 29. *Lainer & Collette*, 5 L. N. 412, S. C., 1882.

## VII. RIGHT TO.

35. In an action to recover damages for the infringement of a patent.—*Held*, that an immaterial variation of a machine in general use, cannot be the subject of a patent right, there must be at least a new adaptation of a known principle or some change which has called forth the inventive faculty. *Baril v. Masterman*, 4 L. N. 181, S. C. R., 1881.

36. And where a provisional order to restrain defendants from using the invention during the suit was asked for and it appeared that months had elapsed since the *enquête* on this petition was begun, it was ordered that proof be completed on all the issues *avant faire droit*. *Morin & Berger*, 4 L. N. 183, S. C., 1881.

## VIII. SALE OF.

37. The sale of the right to use an invention contains a warranty that the invention is new and useful. *Dery & Hamel*, 7 L. N. 405, Q. B., 1884.

38. The purchaser of such right is not required to have the patent set aside before he can recover the price paid by him. *Ib.*

39. The use of a patent for manufacturing purposes is a commercial matter. *Ib.*

## PATERNITÉ

I. ACTION EN DÉCLARATION DE *See* SEDUCTION.

II. EVIDENCE OF *See* EVIDENCE.

## PAWNBROKERS.

I. RIGHTS OF.

II. WHO ARE.

40. A pawnbroker is entitled to security that the pledge seized in his hands, shall if sold, produce enough to indemnify him. *Beaudry & Lépine*, 5 L. N. 103, S. C. 1882.

II. WHO ARE.

41. The case of *Perkins & Martin*, referred to in II. Dig. 572, 24, reported at length, 25 L. C. J. 36, S. C. R. 1880.

## PAYMENT.

I. AMBIGUITY IN RECEIPT.

II. DELEGATION OF.

III. DEMAND OF.

IV. EVIDENCE OF.

V. IN FRAUD OF CREDITORS.

VI. NOVATION.

- VII. OF BONDS NOT RETURNED.
- VII. OPTION TO PAY IN CASH OR BONDS.
- IX. PLACE OF.
- X. PROOF OF.
- XI. PROOF OF ERROR IN.
- XII. SUBROGATION.
- XIII. TENDER.

#### I. AMBIGUITY IN RECEIPT.

42. Question of interpretation of a receipt, filed in answer to the action of plaintiff, decided in favor of the discharge. *Giroux & Normandin*, 7 L. N. 277, S. C. 1877.

#### II. DELEGATION OF.

43. An acceptance of a delegation in a deed of sale whereby a sum of money is made payable to the party accepting, on condition of such party granting a discharge of the character specified in the deed, compels the party so accepting to execute the discharge in question before suing to recover the money. *Le Crédit Foncier du Bas-Canada & Thornton*, 25 L. C. J. 243, S. C. R. 1880.

44. Action for \$3,792.75 on the alleged acceptance, by plaintiffs, of a delegation of payment in a deed of sale from L. to R., of date 26th May, 1875, whereby R. undertook to pay appellants, in discharge of L., a hypothecary debt charged upon the property by L., in favor of appellants. The action alleged that the delegation became perfect by the due registration of the deed of the 26th May, 1875, and that on the 16th March, 1877, the appellants had, by notarial act, duly signified their acceptance of the delegation of payment, and the respondent had in consequence become their personal debtor. R. pleaded that he had never become the personal debtor of the appellant, that the deed of the 26th May, 1875, had been taken by him to secure an indebtedness of L. to him, and was subject to a condition of "réméré," until the 1st January, 1876. That L. remained in possession until the 23rd August, 1876, when R. reconveyed the property to L., who remained in possession until the 30th January, 1877, when the appellants became the adjudicataire thereof at the sheriff's sale for \$50.00, that the acceptance of the delegation after the sale on the 17th March, 1877, signified the 26th March, of the same year, could not render the respondent personally liable, the indication of payment in the deed on the 16th May, 1875, having been expressly revoked by the retrocession of the 23rd August, 1876. The appellants replied that the pretended retrocession could not liberate the respondent nor destroy the operation of the registration of this deed, moreover that he had paid sums on account, acknowledged himself the personal debtor, frequently offered and promised to pay, had asked for time and negotiated for a settlement. The receipts on account, however, were not conclusive of the object of the payment. *Held*, that as the formal accept-

ance was posterior to the retrocession that there was not sufficient acceptance to bind R. *Société Per. de Con. Jacques-Cartier & Robinson*, 1 Q. B. R. 32 & 4, L. N. 38, Q. B., 1880.

45. Question as to the rights of *délégués* under the following circumstances:—Donation by father to son of half of lot No. 161, in the parish of Three Rivers. Sale by father and son conjointly to the brother of the father of the said lot for the sum of \$2,800, whereof \$775 cash and the balance payable to different persons among others to pay \$120 each, to the brothers and sisters of the son. In the following year, the purchaser gave a hypothec on the lot in question to his son for \$836.29. Subsequently, some two years, the purchaser resold the lot back to the elder of his two vendors. On a judicial sale of the property, the brothers and sisters to whom the purchaser at the first sale was to pay \$120 each, as part of his purchase money, were collocated for that amount, and the collocation was contested by the son, to whom the mortgage had been given for \$836.29. The grounds of contestation were that the first sale was simulated and fraudulent, that the resale to one of the vendors of the same lot was a retrocession and the indication of payment, not having been accepted before the retrocession, there was confusion of the balance of the price of the first sale, and the *délégués* could not recover. *Held*, that there was no retrocession and that the indication having been made by two vendors could not be revoked by one of them who had repurchased the property, and moreover, as the stipulant was himself the tutor of the *indiquée*, who was a minor at the time, there was a sufficient acceptance and the collocation would be maintained. *Dostaler & Dupont*, 8 Q. L. R. 365, S. C. R., 1882.

46. In November, 1874, a brother of plaintiff, sold to defendant an immoveable for the sum of \$1,000, one half payable in cash and the other half to plaintiff in discharge of the vendor, by instalments. Another brother of plaintiff intervened in the deed and accepted for him. Plea that the defendant had paid to the vendor the balance due previous to action brought and had taken his discharge; that the vendor was not indebted at the time to the plaintiff, that the delegation had not accepted the delegation previous to the payment, and that the delegation was made only in the interests of the vendor. All these allegations were established by the proof, and the plaintiff on *faits et articles* admitted that the vendor owed him nothing and that it was just a matter of accommodation between them, entered into for the convenience of the vendor, and to put it out of his power to spend it. It also appeared that the brother who had accepted had no special power to do so, and was simply employed to act for him in ordinary affairs. *Held*, under these circumstances, that the payment to the vendor was a good payment and the action

was dismissed. (1) *Lajoie & Desaulniers*, 7 Q. L. R. 272, S. C. R., 1881.

47. A creditor received certain railway bonds as collateral security for notes of his debtor. In a suit to recover the bonds brought by the curator to the debtor's vacant succession, the creditor pleaded that the debtor had agreed to transfer the bonds to one G, for a price named and that G, had assigned his rights to defendant. *Held* that as there was no evidence that the obligation was accepted by G, prior to the insolvency or death of the debtor it could not be urged as a defense to the action. (2) *Paupé & Sénécal*, 7 L. N. 30, S. C., 1884.

### III. DEMAND OF.

48. *Per Curiam*.—The defendant in this case, who resides at a distance from the city, being indebted to the plaintiff for goods, came to the city and visited the plaintiff's establishment to pay the amount of an account due by him. He was told that the account was in the hands of a lawyer for collection, whom he must see; and going to see him the latter demanded \$10 for his costs, having filed a *fiat* for a writ. Defendant would not pay this amount, and returning to the plaintiff paid him the amount of his account. The action was served and returned for costs. The *fiat* was dated the 20th and changed to the 19th of November, and was served on the 21st. The account was paid on the 19th. The defendant pleaded to the action that it was not maintainable, as no demand been made upon him before the institution of the action. The plaintiff answered that he, defendant, had been written to about the account, and that it was the custom among merchants to pay on such a demand at the debtor's domicile. The question is where is the debt payable? Is it payable at the plaintiff's domicile? The debt is querable. You must go to the debtor's house, either personally or by attorney, who is in a position to give a receipt. The custom alleged by the plaintiff cannot take the place of law. The law gives the debtor the right to pay at his domicile when no place of payment is specified, and this is but right. The defendant's plea is a good one; there was no demand of payment, and therefore the action must be dismissed with costs. *Smardon & Lefavre*. S. C., 1884.

### IV. EVIDENCE OF.

49. Plaintiff sued for an amount which he alleged ought to be to his credit in the Bank defendant. The Bank filed a note which plaintiff had endorsed for \$200, but on which plaintiff asserted \$100 had been paid by the maker and referred to a pencil memo., on the

note which read "*Cent piastres couvert par hypothèque*." The bank, on the contrary, made proof that they had received nothing on account from any source. Judgement dismissing action confirmed. *Noisieux & La Banque St. Jean*. 5 L. N., 360, S. C. R., 1882.

50. The respondents who were creditors to an amount exceeding \$4000, of the insolvent firm of C. and M. complained that appellant had received from C. & M. a sum of \$3824, subsequently to their insolvency, and that they asked that they be ordered to pay that amount into Court for the benefit of the creditors generally. The facts were that in the beginning of 1881, the defendants wishing to encourage C. & M. their relative, advised them to form a partnership and commence business in Montreal. The partnership was formed, and by clause 7 of the deed it was stipulated that the books of C. & M. should be regularly kept, and that should appellants have access to all the accounts and transactions. The book-keeper of C. & M. was also book-keeper to appellants. From April, 1881, up to December 1881, C. & M. bought goods from appellants to a considerable amount. They also bought goods from J. G. M. & Co. appellants, becoming responsible to the extent of about \$1,200. In January, 1882, C. & M. made an inventory of their affairs by which they showed assets \$15,386.90 and liabilities \$16,489.68.—*Held*, that appellants must have known of the insolvency of C. & M. in May, June and July 1882. *Boisseau & Thibadeau*, 7 L. N. 274 & 12 R. L. 672. Q. B. 1884.

### VI. NOVATION.

51. Action for attorney's costs. The plaintiffs set up an action taken by F. X. G. against C. G. *et al.* in nullity of a deed of sale; which action was defended by them and dismissed with costs to them, taxed at \$55.40. They also alleged appeal from this judgment, and the dismissal of the appeal with costs in their favor, or rather in favor of one of them, taxed at \$145.64. In this appeal the defendants were sureties. Subsequently appeal to the Supreme Court and finally settlement *en justice*, in another case in which one J. L. was plaintiff against F. X. G. C. G. and J. A. N. M. by which settlement the appeal to the Supreme Court was discontinued and it was arranged that the costs to be paid to the attorneys of C. G. for the procedure before the Superior Court will be \$150. Dismissed by the Supreme Court, of the appeal, in consequence of the settlement. The defendants were also sureties before the Supreme Court. The action was for the costs in all three courts. The defendant pleaded that the plaintiffs were bound by the arrangement which constituted a novation of the debt. *Held*, that there was no novation but only an indication of payment. *Ouimet & Choquet*, 25 L. C. J. 223, S. C. R. 1881.

[1] Confirmed in Appeal, 2 Q. B. R. 241, Q. B., 1882.

(2) In appeal.

## VII. OF BONDS NOT RETURNED.

52. Where a person is in default to return bonds deposited with him as collateral security, he is liable for the par value. (1) *Pauze & Sénécal*, 7 L. N. 30, S. C. 1884.

## VIII. OPTION TO PAY IN CASH OR BONDS.

53. Where a person by a contract has an option to pay in cash or bonds, and pays a part in cash, the option is made and the balance can be demanded in cash. *Bowen & Gordon*, 5 L. N. 300, Q. B. 1882.

## IX. PLACE OF.

54. When the contract fixes no place of payment the demand must be made at the domicile of the debtor without the latter being obliged to notify the creditor of his readiness to pay. *Beaudry & Barbeau*, 1 Q. B. R. 268, Q. B., 1881.

55. Lorsque le paiement doit se faire en la demeure du créancier et que le créancier décède avant de recevoir son paiement, le débiteur ne peut déposer le montant dû entre les mains du protonotaire et poursuivre les créanciers pour sa décharge, mais qu'il doit mettre légalement les héritiers du créancier en demeure de se rendre au lieu convenu pour y recevoir leur paiement, et s'il y a des absents parmi les héritiers, le débiteur doit se prévaloir de l'acte des dépôts judiciaire, Québec, 1871, 35 Vict. *Menard & Lussier*, 7 L. N. 59, S. C., 1883.

## X. PROOF OF.

56. To an action for taxes, the defendant pleaded *inter alia* payment. *Held* that the oath of a witness that payment had been made, but the receipt lost, coupled with the presumption arising from the fact that the subsequent years had been duly paid was sufficient. *City of Montreal & Geddes*, 5 L. N. 203, S. C. 1882.

## XI. PROOF OF ERROR IN.

57. L'intimé a emprunté de l'Appelant une somme de \$1000, pour laquelle il lui a consenti une hypothèque, le 2 septembre 1873. Une partie de la somme souscrite a été payée le 2 septembre, et la balance devait l'être à mesure que les bâties que l'intimé construisaient sur le terrain hypothéqué, seraient suffisamment avancées pour garantir le prêt. L'Appelante a payé différentes sommes se montant en tout à \$1000 y compris une somme de \$400, pour laquelle elle produit un reçu du 2 septembre 1873, elle a, en outre, produit un chèque de même date, pour \$350 qu'elle a payé à Payette & Bourdon, le 3 septembre 1873. Le 18 juillet 1878, elle a porté cette action par laquelle elle réclame cette somme de \$350 qu'elle prétend avoir payée par erreur en outre des \$1000 prêtées à l'intimé. *Jugé*: Que d'après toutes les circum-

(1) In appeal.

stances, il appert que le chèque de \$350 a été donné en même temps que le reçu de \$400, que la somme payée sur le chèque se trouvait comprise dans celle de \$400, pour laquelle l'intimé a donné son reçu et que l'Appelante n'a rien payé au-delà des \$1000 mentionnées dans l'obligation et dont elle a été payée par l'intimé. *Société de Construction Montarville & Robitaille*, 1 Q. B. R. 225, Q. B. 1881.

## XII. SUBROGATION.

58. F. sold to L. three lots of land in the city of Montreal. Subsequently L. sold one of these lots to the defendant W. and another to one R. There remained a balance of \$1960 due to F. which the appellant as assignee to L's estate, paid to F. from whom he obtained a subrogation. W's property having been sold by the sheriff, the appellant as being subrogated was collocated for \$1561.99. The respondents, creditors of W. contested this collocation which was rejected by the Superior Court, on the ground that the subrogation had been granted by F. after the claim had been paid and extinguished, and that the appellant had not paid with his own money but that he had only paid one-third, the other two thirds having been furnished to him by W. and R. *Held*, in appeal, confirming this judgment, that subrogation either conventional or legal cannot take place except in favor of a third party who pays the debt of another; that the appellant had paid F. as the representative of L. who was F.'s personal debtor, and who was bound to protect W. against F.'s claim, and that the payment so made had entirely extinguished the debt for which appellant was collocated. *Stewart & Metropolitan Building Society*, 1 Q. B. R. 324, Q. B. 1881.

59. Appellants purchased from P. R. cadastrol lot 1716, St. Antoine ward, and the balance of purchased money was transferred by various deeds to C. and by the sale of the property to B, the latter became liable to pay this balance to the exoneration of appellants. B. then made an exchange with respondents of said lot for lot 1664, sec. 74 in the same ward and to guarantee respondents against said balance of purchase money hypothecated the greater part of last mentioned lot in their favor. Subsequently B. sold a portion of 1664, sec. 74, to P. S. R. and others, and obliged them to pay the balance of purchase money so payable to C., and to this deed respondents became parties and accepted P. S. R. and others in place of B., and discharged B. from all personal responsibility in their favor. C. then sued respondents hypothecarily for three instalments of interest due on said balance of purchase money and the respondents paid, taking a notarial discharge in which they claimed the legal benefit of subrogation, under Par. 2 of Art. 1150 C. C., and sued appellants as the personal debtors of the amount. *Held*, that appellants were liable to pay the amount demanded and could not invoke the benefit of said release



in favor of B. *Reford & Les Ecclesiastiques of the Seminary of Montreal*, 28 L. C. J. 1, Q. B., 1882.

60. Where the Corporation of Quebec had seized and sold the property of a wife *séparée de biens* for taxes due by her husband.—*Held* that she was not legally subrogated in the privilege of the Corporation for the amount. *Verner & Blanchet*, 8 Q. L. R. 288, S. C. R. 1882.

### XIII. TENDER.

61. The defendants being sureties in appeal and liable for costs under their bond, on the 30th 1880, made a tender "on condition that if the judgment rendered in the said matter be reversed, the money will be returned to them who now pay as Molson's sureties." Action was taken out and the defendants pleaded an unconditional tender, and made an unconditional consignment of the money with their plea. Judgment condemning them unconditionally to pay all costs confirmed on the ground that they had no right to attach a condition to their tender (1). *Carter & Ford*, 4 L. N. 77, S. C. R. 1881.

62. Where a tender is refused simply on account of more being claimed to be due, it is not necessary that the amount tendered be tendered in coin. *Vide* *British Lion*, 2 Stuart's V. A. R., and in *Jones v. Arthur*, Jurist. 856, Fisher's Morrison Digest, vbo., Tender, p. 829. A tender made in the form of a cheque is a good tender, where no objection is made to the quality, but only to the quantum of the tender. *Caird & Webster*, 9 Q. L. R. 158, S. C., 1883.

### PENALTY

I. ACTION FOR UNDER QUEBEC ELECTIONS LAW, *see* ELECTION LAW.

II. FOR NON REGISTRATION OF MARCHANDE PUBLIQUE, *see* MARRIED WOMEN.

### III. PROCEEDINGS FOR.

63. The provisions of a statute creating a penalty must be interpreted strictly. A prosecution under such statute must follow the exact terms of it. *Crépeau & Loiseau*, 12 R. L. 139, S. C., 1882.

### PENITENTIARIES

I. ACT RESPECTING, *see* C. 46 VICT. CAP. 37.

### PENSIONS.

I. TO PUBLIC SERVANTS AND EMPLOYEES, *see* Q. 44-45 VIC. CAP. 14.

(1) *Vide* II Dig. 69-349.

### PEREMPTION.

I. ERROR IN CERTIFICATE.

II. INTERRUPTION OF.

III. PROCEDURE IN.

IV. RIGHT TO.

I. ERROR IN CERTIFICATE.

64. Motion for peremption accompanied by the usual certificate in which, however, the name of one of the parties was spelled *Benister* instead of *Bemister*. *Held* fatal and motion dismissed. *Burland-Desbarats Lithographique Co. & Bemister*, 4 L. N., 101, S. C. 1881.

65. But in another case *held* that the omission of a letter in the name of plaintiff, in the Prothonotary's certificate of last proceeding, cannot be set up as a bar to peremption where three years have elapsed from last proceeding. The Court may order that the certificate be amended before adjudicating upon the application for peremption. *Saunders & Herse*, 6 L. N. 68, S. C. R. 1883.

II. INTERRUPTION OF.

66. Peremption will not run in favor of a party who is dead, and cannot be demanded in the name of such party, but the death of one of the defendants does not prevent the other defendant from moving and obtaining peremption in his own favor. *Bennet & Harniger*, 25 L. C. J. 148, S. C. 1880.

67. The defendant made a motion for peremption. The last incident in the cause was on the 7th December, 1881, when the cause was at enqueue, and the entry in the plunitif was that the case was then continued to 9th December 1881, by consent. The defendant contended this was not a valid proceeding in the cause, and that, therefore, peremption was acquired to him. He likened the case to *Cook vs. Miller*, 4 R. L. 240, at Quebec, when the entry in the plunitif was that the case had been called. *Per curiam*.—The cases are entirely different. Here the cause was adjourned by the agreement of the parties. It was a valid and useful proceeding. In the case of *Cook vs. Miller*, the case was called by the prothonotary and nothing was done. There was no intervention or proceeding by either party. Motion dismissed. *Kellond & Reed*, 5 L. N. 94, S. C. 1882.

68. Les pourparlers et arrangements, ou projets d'arrangements entre les parties ont pour effet d'interrompre la prescription, s'ils sont légalement établis. *Armstrong & Trudel*, 6 L. N. 162, S. C. 1883.

69. And a requisition for faits et articles filed by the plaintiffs' attorney after the service on him of a motion by defendant for peremption d'instance but before the motion was filed and before the certificate of want of proceedings was filed is not sufficient to prevent the granting of the peremption. *Drolet & Robitaille*. 9 Q. L. R. 310, S. C. 1883.

## II. PROCEDURE IN.

70. The service of the petition in peremption is regular if it is made on one of the members of a legal firm, the other having, since the institution of the action, accepted a position in the public service, incompatible with the practice of his profession. *Labossière vs. Ethier*, 11 R. L. 104, S. C. 1881.

71. And similarly the petition may be made by one member of the firm, the other having been appointed judge. *Ib.*

72. And were the action is against the several defendants, the petition may be made on behalf of one of them. *Ib.*

## IV. RIGHT TO.

73. An action against several defendants may be dismissed as to one of them, only on his motion for peremption d'instance. *Auldjo & Prentice*, 1 Q. B. R. 123, Q. B. 1881.

## PERJURY—See CRIMINAL LAW.

## PERSONAL ACTION.

I. WHAT IS, *see* ACTIONS, NATURE OF.

## PERSONS.

I. STATUS OF UNAFFECTED BY INSANITY IF NOT INTERDICTED, *see* CIVIL STATUS.

## PETITION OF RIGHT.

## I. ON CONTRACT AS COUNSEL.

## II. QUEBEC ACT.

## I. ON CONTRACT AS COUNSEL.

74. By art. 25 of the Treaty of Washington, it is provided "that each of the high contracting parties shall pay its own Commissioner and Agent or Counsel; all other expenses shall be paid by the two governments in equal moities." By 35 Vict. Cap. 25, the fisheries arts. of the Treaty of Washington were made part of the Law of Canada, and a Queen's Counsel, residing in the city of Montreal, was one of the Canadian Counsel before the Commission sitting at Halifax. There was evidence showing the agreement entered into between the Minister of Marine and Fisheries and the suppliant, at the city of Ottawa was to the following effect:—That the suppliant was to receive \$1000 per month on account of his expenses and services whilst the Commission was sitting at Halifax, and that a further sum to be settled upon, after the award of the

Commissioners would be paid.—*Held* that this agreement constituted a valid contract, and that a petition of right would be to recover the amount due him under such agreement. *Doutre & The Queen*, 4 L. N. 34, Ex. Ct. 1881.

75. And that the agreement entered into, having been made at the city of Ottawa, the rules of evidence in force in the Province of Ontario were applicable and suppliants evidence on his own behalf was therefore admissible. *Ib.*

## II. QUEBEC ACT.

Whereas it is expedient to make provision for the institution of suits against the Crown, in the Province of Quebec, by Petition of Right; therefore Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. This act may be cited as The Petition of Right Act.

2. Any person who seeks relief against the Government of the Province, whether it be a revendication of moveable or immovable property, or a claim for the payment of money on an alleged contract, or for damages or otherwise, may address a Petition of Right to Her Majesty.

3. The Petition of Right shall be addressed to Her Majesty in the words or to the effect of form No. 1, in the schedule of this act, and shall state the names, the occupation or quality, and the domicile of the suppliant, and the attorney, if any, by whom the same is presented and shall set forth with convenient certainty the facts entitling the suppliant to relief observing the provisions of Art. 52 of the Code of Civil Procedure, and it shall be signed by such suppliant or his attorney.

4. The petition must be supported by an affidavit of the suppliant, or of a competent person attesting the truth of the facts therein alleged.

5. The petition shall be left with the Provincial Secretary, for submission to the Lieutenant-Governor, in order that he may consider it, and if he think fit, grant his fiat that right be done. No fee is payable on leaving or upon receiving back the petition.

6. Upon the Lieutenant-Governor's fiat being obtained, the petition and fiat is filed in the office of the Prothonotary for the district of Quebec, of the Superior Court for the Province of Quebec, which Court sitting in the district of Quebec, has exclusive original jurisdiction in matters of Petition of Right.

7. The suppliant must, at the time he files his petition in the Prothonotary's office, produce and file the written proofs which he has alleged in support of his claim, together with an inventory of such exhibits, and he must also deposit a sum of two hundred dollars; the amount thus deposited is intended to pay the costs of Government if the Court should grant it, and if not, it is returned to the suppliant.

8. A copy of the petition, and Lieutenant-Governor's fiat, certified by the Prothonotary, with an endorsement thereon, that the deposit has been made shall be left at the office of the Attorney General of the Province, with a notice in the words or to the effect of form No. 2 of schedule of this act, requiring the production to a contestation within thirty days after the service.

9. If, within the delay of thirty days, to be established by the production of the certificate of service of the petition, fiat and notice, a contestation is not filed, the suppliant proceeds as in a suit in which the defendant fails to appear. If a contestation is filed, the subsequent proceedings are the same as in an ordinance suit in which the defendant has pleaded.

10. In case any Petition of Right is presented for the recovery of any moveable or immovable property, which has been granted any way, or disposed of by

or on behalf of Her Majesty or her predecessors, a writ of summons shall be issued by the Prothonotary upon the written requisition of the Attorney General or of the suppliant, and shall be served with a copy of such petition and of the Lieutenant-Governor's fiat, certified by the Prothonotary, upon the person in the possession or enjoyment of such property commanding him to appear before the Court on the day therein mentioned, to plead to or answer the claim.

11. An appeal lies to the Court of Queen's Bench sitting in appeal, from the final judgment rendered by the Superior Court, on any such petition, but such appeal must be brought within thirty days from the date of the judgment.

12. The ordinary delays and rules of the Code of Civil Procedure apply in so far as not incompatible to suits by Petition of Right, in the Superior Court, on an appeal, but all suits by Petition of Right shall be tried by a Judge without a jury, notwithstanding Art. 348 of the Code of Civil Procedure.

13. The suppliant may be avoided costs or may be condemned to pay costs as in an ordinary suit. All costs adjudged shall be paid by or to the Provincial Treasurer as to the case may be.

14. When the Government is adjudged to surrender or restore moveable property, the suppliant may, after the expiring of the delay to appeal, or in case of appeal, obtain a writ of attachment in revendication under which the property is seized and delivered to the suppliant.

15. When the Government is adjudged to surrender or restore immoveable property, the suppliant may, after the expiry of the delay to appeal, or in case of appeal, fifteen days after the rendering of the judgment in appeal, obtain a writ of possession under which the suppliant is placed in possession.

16. When the Government is adjudged to pay costs or the sum of money, with or without costs, to the suppliant after the expiring of the delay to appeal, or in case of appeal, after the rendering of the judgment in appeal, a certified copy of the final judgment entitling the suppliant to such costs or to such sum of money, with or without costs, may be left at the office of the Provincial Treasurer, and the Provincial Treasurer shall pay out of any moneys in his hands for the time being, legally applicable thereto, or which may thereafter be voted by the Legislature for that purpose, the amount of any moneys or costs which have been awarded to the suppliant by the judgment.

17. Nothing in this act contained shall prejudice or limit otherwise than herein provided the rights, privileges or prerogatives of Her Majesty or her successors, or prevent any suppliant from proceeding as before the passing of this act.

18. This act shall come in force on the day of its sanction.

## PETITIONS *see* PROCEDURE.

## PETITOIRE *see* ACTION.

## PETROLEUM.

### I. INSPECTION OF *see* INSPECTION LAW.

## PEWS.

### I. IN CHURCHES *see* CHURCH PEWS.

## PHYSICIAN.

### I. EVIDENCE OF *see* EVIDENCE.

### II. PRACTISING AS WITHOUT LICENSE, *see* MEDICINE.

## PIANO.

### I. LEASED WITH PROMISE OF SALE DOES NOT DIVEST THE VENDOR OF HIS RIGHT, *see* LEASE.

## PIGNORATITIA *see* PLEDGE.

### I. PILOTAGE *see* MARITIME LAW.

## PILOTS.

### I. ACT CONCERNING, C. 45 VIOT. CAP. 32.

## PLEADING.

### I. ADMISSIONS IN.

### II. AMENDMENT OF.

### III. ANSWER.

### IV. BY.

*Executors summoned en reprise d'instance.*

*Heirs for share of succession.*

### V. CHOSE JUGÉE.

### VI. DECLARATION.

*Amendment of.*

### VII. DELAY TO FILE PLEAS, *see* PROCEDURE.

### VIII. DEMURRER.

### IX. DENIAL OF SIGNATURE.

### X. EXCEPTION TO THE FORM.

### XI. FEAR OF TROUBLE.

### XII. IN ACTION.

*Against a succession.*

*By Insurance o C.*

*En déclaration d'hypothèque.*

*For work and labour.*

*On bills and notes.*

*Pro socio.*

*To account.*

*To set aside a sale.*

### XIII. IN CASES OF CAPIAS.

### XIV. INCOMPATIBLE PLEAS.

### XV. IN HYPOTHECARY ACTION.

### XVI. IN PETITORY ACTION.

### XVII. IN QUI TAM CASES.

### XVIII. IRRELEVANT PLEAS.

### XIX. LIS PENDENS.

### XX. LOSS OF TITLE.

### XXI. RECIPROCITY OF WRONG IN ACTION FOUNDED ON DELITS.

### XXII. SPECIAL REPLICATION.

## XXIII. WANT OF NOTICE OF ACTION.

## XXIV. WANT OF PROTEST.

## I. ADMISSIONS IN.

76. Plaintiff, by his declaration, claimed from defendant the sum of \$306.35, interest and costs. The defendant, by his plea, acknowledged to owe \$200.16 "for which said defendant hereby offers to confess judgment with costs of an action of that class" and concluding to the effect that *acte* be granted him of his offer to confess judgment for said last sum and interest from the service of this present action, with costs of an action of that class. And in case plaintiff should not accept that offer, that his action for any amount in excess of that sum be dismissed with costs from the filing of the plea. This pleading was followed by a *défense au fonds en fait*. Plaintiff joined issue by an answer in which he said: That nevertheless for the purpose of expediting proceedings in this cause the said plaintiff is ready and willing to accept and hereby accepts the plaintiff's confession of judgment for \$200.16. Wherefore plaintiff praying *acte* of his acceptance of defendant's said confession of judgment for the sum of \$200.16, under reserve, and prays the dismissal of said plea as regards all other points therein raised and persists &c.—*Held* following *Poulin & Prévost* that the admission in defendant's plea accompanied by an offer of confession of judgment is sufficient to justify a judgment for the amount so admitted, and in such case the costs would be taxed at the discretion of the Court. *Bertrand & Hinerth*, 25 L. C. J. 168, S. C., 1881.

77. The action was for \$205, amount of a promissory note. The defendants offered to confess judgment for all but a sum of \$18, which they said they did not owe. The plaintiff contested but did not succeed in proving any larger amount to be due than that offered. The judgment of the Superior Court was for the amount offered and full costs inasmuch as no confession had been filed. In appeal, this judgment was reversed and the plaintiffs were condemned to pay the difference of costs between an action settled after plea filed and a contested action up to judgment. *Poulin & Prévost*, 25 L. C. J. 170, Q. B., 1875.

## II. AMENDMENT OF.

78. To an action on a promissory note, the defendant pleaded that the note was forged and denied the signature. Subsequently he amended his plea and alleged that he had signed the note by error, by making his mark, and that what he intended to do, was to give a receipt for the amount in question. *Held* that this change of defense, under the circumstances, was not an indication of bad faith and the evidence appearing to the Court to sustain the amended plea, the judgment dismissing the action was confirmed. *Benoit & Brail*, 6 L. N. 342, Q. B. 1883.

## III. ANSWER.

79. In answer to a plea, containing allegations which should have been set up in the declaration, will be rejected on motion. *Compagnie de prêt et de Crédit-Foncier & Barthe*, 12 R. L. 637, S. C. 1882.

## IV. BY.

80. *Executors summoned en reprise d'instance*.—Where a party summons executors *en reprise d'instance*, and files the will appointing them as such, he is not obliged to prove that they have accepted the position if they have only pleaded a *défense en fait*, without specially denying that they have accepted. *Price & Hale*, 1 Q. B. R. 233, 1881.

81. And where such executors have pleaded a *défense en fait*, that there is already a judgment on a previous *demande en reprise d'instance* uncontested, they cannot avail themselves of such irregularity in appeal. *Id.*

82. *Heirs for share of succession*.—Petitory action claiming a quarter of the property described as belonging to the heir of her father. Defendant pleaded that he had acquired all the property of plaintiff's mother, who had sold it to him, one half as belonging to her and the other half as tutrix to the plaintiff and her brother, that the plaintiff's mother was since dead, and the plaintiff was bound to guarantee him in the possession of the property. Plaintiff answered that she had renounced the succession of her mother, and defendant replied specially that plaintiff on the contrary had meddled in the succession, and had appropriated some of the property of the succession and the renunciation was consequently without effect. He also demurred to the answer of plaintiff on the ground that the renunciation should have been set up in the declaration and not by special answer.—*Held* dismissing the demurrer that the plaintiff was not obliged to set up her renunciation of the succession, and the special answer was perfectly good. *Guay & Caron*, 7 Q. L. R. 217, S. C. 1881.

## V. CHOSE JUGÉE.

83. The allegation in a pleading that a judgment has become executory and has the force of *chose jugée*, is sufficient in law, though the delay for appeal from such judgment has not expired at the time of so pleading. *Lareau & de Beaufort*, 5 L. N. 292, S. C. R. 1882.

## VI. DECLARATION.

84. *Amendment of*.—Where action is brought in the district of Montreal for libel in another district, and the defendant excepts to the jurisdiction, the plaintiff will not be allowed to amend by alleging publication in the district of Montreal. *Senécal & La Compagnie d'Imprimerie de Québec*, 4 L. N. 414, Q. B. 1881.

## VIII. DEMURRER.

85. A writ of *mandamus* was taken against the Curé of St-Angélique, of which the plaintiff was a parishioner, for having rejected a vote tendered at a meeting of the fabrique. The writ was addressed to the "Rev. Messire F. L., prêtre et curé de la dite paroisse de Ste-Angélique, diocèse d'Ottawa, dans le dit district." The petition set out that the curé, as such, was by law *ex officio*, chairman of the meeting, and had rejected the vote in that capacity. *Défense en droit* on the ground that the writ was addressed to the defendant in his personal and not in his official quality. *Per curiam*.—This is not a ground of *défense en droit* at all. That plea could only raise the question, whether good cause of action was alleged on the face of the petition or not. The defendant it is true, is addressed as Curé in the writ, that is not objected to, but in the *demande* or *requête* it is plainly and fully alleged that he was, in virtue of his office as Curé, bound by law to preside at that meeting, and that he did preside at it. *Défense en droit* dismissed. *Birabin & Lombard*, 4 L. N. 355, S. C. R. 1881.

86. Question of a demurrer which had been preceded in order of the writing by a *défense en fait*. The Court discharged the *débiteur* on the ground, that the demurrer should have been placed first. *Content & Poirier*, 4 L. N. 324, S. C. 1881.

87. Action to set aside an agreement entered into between defendants and the Greath North Western Telegraph Company, and to restrain the defendants from acting further upon it. Defendants demurred on the ground that the conclusions were such as could not be taken in an ordinary suit or action by a shareholder in a corporation, but could only be taken in a suit under the *Injunction Act*, or by a public officer under the provisions of the law, respecting the remedies against corporations for acts in excess or abuse of their franchise. The defendants alleged substantially the same grounds of *défense* by a plea of *exception péremptoire en droit*. Motion to dismiss both these pleas on the ground that the matters therein set forth ought to have been pleaded by exception to the form. Motion granted, and on application for leave to appeal, held that the sufficiency of such pleas could not be tested on motion, and appeal allowed. *Low & Montreal Telegraph Company*, 4 L. N. 381, Q. B. 1881.

88. Where, to an action for freight under a charter party, the defendant pleaded *inter alia* compensation for damage to the corporation by plaintiff's fault and plaintiff demurred on the ground that the defendants had employed a stevedore themselves and the plaintiff was thereby relieved of any loss arising from stowage.—Held that this would depend a good deal upon the facts, and *preuss* *avant faire droit* ordered. *Bozzoi & Moffatt*, 4 L. N. 61 S. C., 1881.

89. To an action of damages for the seizure of a horse and cart in the high road, as illegal and malicious, the defendant demurred. Demurred dismissed. *Nadon & Charrette*, 4 L. N. 61, S. C., 1881.

90. And a demurrer by plaintiff to defendants plea of compensation was also dismissed. *Id.*

91. Defendants pleaded a *défense en droit* to a count, charging them with conspiring to ruin him by putting him into bankruptcy, on the ground that the day and place were not given. Held no ground of demurrer (even if necessary) but rather of exception to the form. *Demers & Lamarche*, 4 L. N. 54, S. C., 1881.

92. On ne peut pas répondre en droit à une *défense en fait*. *Banque Jacques-Cartier & C<sup>tes</sup>*, 9 Q. L. R. 76, S. C., 1883.

## IX. DENIAL OF SIGNATURE.

93. Where two persons, sued jointly on a writing plead together to the merits, they cannot afterwards urge that the signature to the writing is not the signature of both or of either of them, more especially in the absence of an affidavit denying the signature as required by Art. 145 C. C. P. *Déry & Hamel*, 7 L. N. 405, Q. B., 1884.

## X. EXCEPTION TO THE FORM.

94. Where a declaration is vague and insufficient, the defendant must take advantage of it by an exception to the form and not by pleading to the merits. *Birch & Desjardins*, 11 R. L. 468 S. C., 1882.

95. Action was brought against a broker, complaining of fraudulent overcharges in accounts rendered, &c. The defendant filed an exception *à la forme* to the amended declaration, on the ground of vagueness of allegation, inasmuch as the plaintiff did not specify any one of the hundreds of transactions had by the defendant with and for the plaintiff, as that on which he intended to rely in support of his charges of fraud and deception. It was also represented that the accounts which it was admitted had been rendered at regular periods by the defendant to the plaintiff, should be produced, as it was impossible for the defendant to defend himself against the charges made unless the accounts were filed. The Court, considering the exception unfounded, dismissed it with costs. *Barber & Brunett*, S. C. R., 1883.

## XI. FEAR OF TROUBLE.

96. Where fear of trouble or eviction is set up in answer to an action for the balance of the price of sale of an immoveable, it may be pleaded by a temporary exception to the merits and is not necessarily a preliminary plea. *Law & Frothingham*, 25 L. C. J. 172, Q. B., 1881.

## XII. IN ACTION AGAINST A SUCCESSION.

97. The insolvency of the property belonging to it cannot be pleaded as a defense to an action by a legatee or a creditor against the executors. *McGrath & Graham*, 12 R. L. 607, S. C., 1884.

98. In an action against a Mutual Insurance Company—*Held* that as it was neither alleged or proved what was the effect of the period at which it was sustained nor the amount of the expenses of the Company, nor when they were incurred; that the action was properly dismissed. *Fire Mutual Insurance Company & Dupuis*, 28 L. C. J. 179, Q. B., 1881.

99. *En déclaration d'hypothèque*.—Where the defendants, to an action *en déclaration d'hypothèque*, pleaded that when they purchased, they did in so good faith, believing the property to be clear; that they were shown a statement signed and acknowledged as correct by the plaintiff, showing that the balance then due on the property was \$1,442. 43, which amount had since been paid to plaintiff. Plaintiff demurred on the ground that defendants could not plead matters personal to their immediate vendor against whom plaintiff had judgment for the amount he claimed. Demurrer dismissed. *Dubuc & Kidston*, 7 Q. L. R. 43, S. C., 1881.

100. The defendant, in answer to an action for libel, pleads that he has caused no damage to the plaintiff, and that his reputation and his character was so bad, that he had not suffered by the libel, and that his bad reputation had been the result of certain crimes and offenses committed by the plaintiff. *Baxter & Fahey*, 11 R. L. 7, S. C., 1881.

101. *For work and labour*.—In an action in assumpsit for work and labour done and materials provided, it is sufficient to allege that the work was done and materials provided for a building belonging to the defendant, at his request, without alleging that the work and materials were accepted by him. *Benoit & Foster*, 28 L. C. J. 267, S. C., 1872.

102. *On Bills and Notes*.—In an action on a promissory note made payable at the office of the payee (the plaintiff) demurrer was filed on the ground of want of presentation and that such presentation was not alleged in the action. *Held*, that where the action is against the maker, drawer or acceptor, that no averment of presentation is necessary, and that it is for the defendant to allege and prove that at the time the note became due provision was made to meet it at the place indicated. *Crépeau & Moore*, 8 Q. L. R. 197, S. R., 1882.

103. La défense en fait à une action sur billet promissaire ne peut pas être rejetée sur motion, quoiqu'elle ne soit pas accompagnée de l'affidavit requis par l'Art. 145 C. P. *Banque Jacques-Cartier & C<sup>te</sup>*, 9 Q. L. R. 76, S. C., 1883.

104. A plea to an action *pro socio* asking that the plaintiff be condemned to render an account or pay a certain sum will not lie, as

that is matter for an incidental demand *Bury & Silverstein*, 7 L. N. 42, S. C., 1883.

105. Where a tutor is sued by his ward, when of age, to render an account, and he pleads that he has been always willing to do so; but asks that the action be dismissed with costs, and at the same date prays *acte* of the production of an account filed with the plea, the plea will be dismissed, and the defendant be ordered to file his account purely and simply, in due form. *Wood & Wilson*, 27 L. C. J. 149, S. C. R., 1882.

106. In an action to set aside a sale in which the purchaser had been charged to pay a certain sum of money to the creditors of the vendor, it was pleaded among other things that the creditors had an interest and should have been called in.—*Held*, dismissing the plea as it did not appear by the declaration that the delegation of payment had been acceptable by the creditors. *Ethier & Paquet*, 12 R. L. 184, S. C., 1882.

## XIII. IN CASES OF CAPIAS.

107. Petitions to quash *capias* may contain matters both of law and fact. *Baxter & Sills*, 4 L. N. 221 S. C., 1881.

## XIV. INCOMPATIBLE PLEAS.

108. By an additional plea to a *demande supplétoire*, in an action for rent, the defendant alleged that he only owed three dollars a month, and that the occupation of the place was not worth even so much as that. Plaintiff moved to compel the defendant to choose between these allegations as inconsistent. Motion dismissed with costs. *Ouimet & Beauchemin*, 4 L. N. 53, S. C., 1881.

## XV. IN HYPOTHECARY ACTION.

109. To a hypothecary action, defendant pleaded among other things "*Que la dite demanderesse n'a pas allégué que le 31 décembre 1867, lorsque cette compagnie (The English and Canadian Mining Co.) a prétendu hypothéquer l'immeuble en question, elle fut la propriétaire et possédait le droit de l'hypothéquer.*"—*Held* that the allegation of a hypothec is in effect an allegation that the person creating the hypothec had power to do so, and therefore, under such allegation, the Court will admit evidence to prove the existence of such power. *Union Bank vs. Nutbrown*, 10 Q. L. R. 287, S. C. R. 1884.

## XVI. TO PETITORY ACTION.

110. Where the holder of property by precarious title was sued for the recovery of property, by petitory action, and pleaded the rights of the person for whom he held, and the consequent absence of title to plaintiff—*Held* that the plea was bad as he should have pleaded by preliminary exception, the name of the person for whom he held, and asked to

be dismissed from the action. *Lesage & Prud'homme*, 26 L. C. J. 213, S. C. R. 1882.

111. Where a tenant to a petitory action is obliged to indicate the name of his lessor, it should be done by preliminary plea and not by temporary exception. *Dupuis & Bouvier*, 7 L. N. 92, S. C. R. 1883.

112. In a petitory action to which the defendant demurred on the ground that the plaintiff had nor alleged his title, nor that of his auteurs, not that the same were enregistered.—*Held*, over-ruling the demurrer, that such allegations were not necessary, and that the averment that the plaintiff's auteurs were at the time of sale to him, proprietors in open, public and peaceable possession of the land so sold in good title was sufficient to render the declaration non-demurrable, on the grounds urged by defendant. *Ross & Lefebvre*, 10 Q. L. R. 244, S. C. R. 1884.

#### XVII. IN QUI TAM CASES.

113. A defendant who is sued for the recovery of a penalty under 31 Vict., cap. 25, sec. 37 (Q) by a plaintiff who brings the action in his own name instead of suing as well for the Crown as for himself, should set up this defect by demurrer and not by exception to the form. *Anders & Hagar*, 6 L. N. 98, S. C. 1883.

#### XVIII. IRRELEVANT CASES.

114. Plea to the effect that the plaintiff *cedant* was insane at the time he made the *transport*, and that the plaintiff was only a *prete-nom*. Plaintiff demurred to this plea as irrelevant and the demurrer was maintained. On motion for leave to appeal, *held* that defendant had nothing to do with the insanity of plaintiff's *cedant* who was not interdicted, nor with the sincerity of plaintiff. *Vallières & Drapeau*, 6 L. N. 154, Q. B. 1883.

#### XIX. LIS PENDENS.

115. Where a curator to a vacant estate was sued *en reddition de compte* and pleaded a former action to the same effect by another of the legatees of the estate in his hands.—*Held* that as he had not pleaded the rendering of an account in the former action, but on the contrary, it was shown that the record in the former action was burnt when the Quebec Court House was destroyed by fire.—*Held* that he had no interest to plead *lis pendens*, except as to costs, and that he would be provided against. *Fraser & Pouliot*, 7 Q. L. R. 148, S. C. 1881.

#### XX. LOSS OF TITLE.

116. Where a defendant, being sued for the price of a real estate refused to pay, on the ground that the property sold was subject to a servitude created by an authentic deed recited in the defendant's exception, but not produced, and defendant afterwards attempt-

ed to prove that the deed was destroyed by the burning of the Court House.—*Held* that the loss or destruction of the deed ought to have been alleged in the plea. *Bussière & Gaboury*, 7 Q. L. R. 51, S. C. 1881.

#### XXI. RECIPROCIITY OF WRONG IN ACTION FOUND-ED ON DELITS.

117. Action for *separation de corps* with forfeiture of matrimonial rights, by husband charging wife's adultery. The case came up on an answer in law to a portion of defendant's plea which set up neglect, misconduct and ill treatment by plaintiff. *Per curiam*—The case of *Brennan vs. McAnnully* (1) appears to be in point that a reciprocity of wrong is no answer to the action. Answer in law maintained. *Lefavre & Belle*, 4 L. N. 298, S. C. 1881.

#### XXII. SPECIAL REPLICATION.

118. Where a motion was made to dismiss a special replication to a special answer which had been filed without the permission of the Court, and it appeared that the special replication was necessary to complete the issues, the motion was dismissed, but with costs against the defendant on the ground that the special replication was well founded, he should have first obtained the permission of the Court. *Guay & Caron*, 7 Q. L. R. 217, S. C. 1881.

#### XXIII. WANT OF NOTICE OF ACTION.

119. Want of notice of action under Art. 22 C. C. P. should be pleaded by exception and not by plea to the merits. *Legault & Lee*, 21 L. C. J. 28, S. C. 1881.

#### XXIV. WANT OF PROTEST.

120. A plea of want of, or irregularity of protest must be specially pleaded and supported by affidavit in accordance with Art. 145 C. C. P. *Bank of America & Copland*, 4 L. N. 154, S. C. 1881.

### PLEDGE.

#### I. BY BILL OF SALE.

#### II. RIGHTS OF PLEDGEE.

#### I. BY BILL OF SALE

121. In November, 1882, G. L. & Co. being in want of money applied to the plaintiff and obtained advances to the amount of \$10,000, and upwards. In security they gave a bill of sale of the goods, stored in their own warehouse, but under the control of the Customs,

(1) 11 Dig. 589-101.

who used it as a bonded Warehouse. The bill of sale consisted of a list of the goods with the following words at the bottom: We hold the within mentioned goods in bond and duty paid to the order of Messrs R. & Co., for advances made by them. *Held* to be a contract of pledge, and to carry privilege. *Ross & Thompson*, 10 Q. L. R. 308, S. C. R. 1884.

## II. RIGHTS OF PLEDGEE.

122. A pawnbroker is entitled to security that the pledge seized in his hands shall, if sold, produce enough to indemnify him. *Beaudry & Lépine*, 5 L. N. 103, S. C. 1882.

## POLICE COURT.

### I. JURISDICTION OF.

### II. SUSPENSION OF JUDGMENT ON PRELIMINARY TRIAL, PENDING CIVIL ACTION.

#### I. JURISDICTION OF.

123. On a complaint for malicious injuries to property, a plea that the defendant acted on the occasion complained of as a municipal officer, and the other as his assistant, is sufficient to omit the jurisdiction of the justice. *Kenny & Berryman*, 9 Q. L. R. 277, Po. Ct. 1883.

### II. SUSPENSION OF JUDGMENT ON PRELIMINARY TRIAL PENDING CIVIL ACTION.

124. The defendant was charged with having, at Montreal, on or about the 11th day of April, 1882, by false pretences and with intent to defraud, obtained from Geo. B. B., in money and in valuable securities, the sum of \$25,000, the false pretences, consisting in the verbal assertion made to complainant through Mr. W., defendant's attorney, that he (defendant) had a good title to certain real property then offered as security for the advance of the said sum, and that such real property was clear of encumbrance, and also consisting in the written assertion made by the defendant himself in the deed of obligation to complainant that the property mortgaged well and truly belonged to him, and moreover, in the verbal reiteration made at the time of the passing of the deed, that the (defendant) was the sole owner of said real property; whereas in truth and in fact a portion of that real property (namely, three eighths of the same) did not then belong to him, but belonged to his daughter. *Per curiam*.—Seeing that the question now debated here is actually pending in the civil court, and using the discretion which the law confers upon me I believe it right to withdraw and suspend the present examination until such time as the civil court shall have adjudicated in the first instance, at least upon the contestation entered into between the complainant and

M. K. and I rest my ruling upon the following decisions, *R.—Ashburne*, 8 C. P. 501, *R.—Eng-ham* 14 Q. B. 396. *Regina & Judah*, 7 L. N. 371, Po. Ct. 1884.

## POLICE LIMITS.

### I. OF CITY OF MONTREAL See MONTREAL.

## POLICE MAGISTRATE—See MAGISTRATES.

### I. JURISDICTION OF See LICENCE LAW.

## POLICY OF INSURANCE See INSURANCE.

## PORTEUR DE PIÈCES.

### I. WHO IS See ATTORNEY AD LITEM.

## POSSESSION.

### I. OF IMMOVEABLE IN BAD FAITH.

### II. OF THINGS DONATED.

### III. SUFFICIENT TO FOUND TITLE.

### IV. WRIT OF.

#### I. OF IMMOVEABLE IN BAD FAITH.

125. Petitory action to recover two pieces of land. Question as to the improvements claimed by the defendant in possession. *Held* that the possession in bad faith is entitled to set off the costs of necessary improvements against the claim for rent, issues and profits received by him during his possession. As to improvements not necessary, the proprietor has the option of keeping them, upon paying the value, or of permitting the possessor to remove them which, however, he may do only when they can be removed, without injury to the land. *Wright & Wright*. 6 L. N. 116, S. C., 1883.

#### II. OF THINGS DONATED.

126. The holder of property by precarious title has no right to plead the rights of the person for whom he holds. *Lesage & Prud'homme*. 26 L. C. J. 213, S. C. R., 1882.

#### III. SUFFICIENT TO FOUND TITLE.

127. In an action *en complainte* the plaintiff who proves his possession at the time of the trouble of which he complains, is presumed to have had possession from the date of



the title which he produces, and he may, to complete his possession, join with his own, that of his auteurs. *Rondeau & Charbonneau*. 11 R. L. 292, S. C., 1882.

128. And where the defendant pleads possession by suffrance, he cannot, in order to show title, shew that the character of his possession is changed, but on the contrary, it must be presumed, to have remained always the same. *Ib.*

#### IV. WRIT OF.

129. Under a judgment in the Circuit Court certain real estate of defendant was sold by the Sheriff, who filed his return in the Superior Court, and the report of his distribution was made there. The defendant refused to give possession. *Held* that the application of the purchaser for a writ of possession should be made to the Superior Court and not to the Circuit Court. *Evans & Hurtubise*. 6 L. N. 336, C. C., 1883.

#### POSSESSORY ACTION—See ACTION.

#### POST OFFICE.

I. MAILING OBSCENE MATTER OR MATTER INTENDED TO DEFRAUD See CRIMINAL LAW.

#### POWER OF ATTORNEY See AGENCY, &c.

#### PREAMBLE.

I. OF STATUTES See ACTS OF PARLIAMENT.

#### PRECEPTORS—See SCHOOL TEACHERS.

I. MEANING OF See EXECUTION EXEMPTION.

#### PREFERENTIAL PAYMENTS — See PAYMENT.

#### PRESBYTERIAN CHURCH.

##### I. CONSTITUTION OF.

130. The constitution of a non established presbyterian church, or in other words, the terms of the contract under which its members are associated are rarely embodied

in a single document but must in part at least, be gathered from the proceedings and practice of its judicatories, and every person who becomes a member of such church must be held to have satisfied himself in regard to the proceedings and practice of its courts and to have agreed to submit to the precedents which these establish. *Dobie & The Board for the management of the Temporalities Found, &c.* 26 L. C. J. 170, P. C., 1882.

131. And the church which existed in Canada previous to 1875, under the name of the "Presbyterian Church of Canada in connection with the Church of Scotland" is a non-established Presbyterian Church, and its minutes afford evidence to the effect that in all matters which its Synod was competent to deal with and determined, the will of the majority as expressed by their vote was binding upon every member of the Synod. *Ib.*

132. And under such association and constitution a trust fund, in its hands, subject to the payment of life annuities to its founders and others, each founder has an interest beyond the mere reception of his annuity and can demand that the fund be administered in strict accordance with law. *Ibid.*

#### PRESCRIPTION.

I. BY THIRTY YEARS' POSSESSION.

II. INTERRUPTION OF.

III. OF BILLS.

IV. OF DAMAGES.

V. OF INTEREST.

VI. OF LOAN.

VII. OF MUNICIPAL TAXES.

VIII. OF OBLIGATION.

IX. OF TAXES.

X. OF WAGES.

XI. POSSESSION OF TEN YEARS.

XII. RIGHT OF CREDITOR TO PLEAD.

I. BY THIRTY YEARS' POSSESSION.

133. Action *en bornage*, the property in dispute being a small piece of land, containing about 143 feet in superficies. By the title deeds of plaintiff and defendant the land belonged to defendant. The defendant, however, contended that he and his predecessors had been in possession of it for thirty years. By the evidence it appeared that the lot in question was in the possession of one G about 1833, and for some time afterwards. It then passed into the possession of one V, and it was proved also that before the great fire of 1845 there was a fence on the line contended for by defendant which fence was destroyed by that fire. The defendant's father proved that about 1852, the fence so destroyed by fire in 1845, was replaced by a new fence which occupied the same position as the one destroyed, and another witness for defendant proved that the fence of which defendant's father spoke was in existence when he first knew the property, some twenty or twenty

two years before the time at which he gave his evidence; but the evidence adduced by defendant did not show that the persons whom he set up as his predecessors exercised any acts of possession or ownership of any kind as to the property in question during the seven years from the fire of 1845, to the summer of 1852. On the contrary two witnesses, examined for the plaintiff, prove that they, as tenants of the *auteur* of plaintiff for a considerable part of the seven years had the use and enjoyment of the piece of land so in dispute. There was nothing to show that V, who possessed the defendant's property after the fire of 1845, was the representative in any way of G, who possessed the same property before the fire. *Held* following *Stoddard & Lefebvre* (1) that as it did not appear that V represented G either *à titre universel* or *à titre particulier*, he could not avail himself of the possession of G, without showing some connecting link between them. *Butler & Légaré*, 7 Q. L. R. 307, S. C., 1881.

## II. INTERRUPTION OF

134. Appellant having been condemned to pay to one McC. the amount of a promissory note made to the order of respondent, and endorsed by him in favor of appellant.—*Held* that the judgment against appellant interrupted the prescription as to the appellant, the endorser, but in order to recover the costs which appellant had paid to his attorney in the action with McC., respondent should have been called into the case *en garantie*. *Hart & Beauchemin*, 1 Q. B. R. 307, Q. B. 1881.

135. The demand was in three counts: 1st a judgment of a Court in the Province of Nova-Scotia; 2nd, a promissory note; 3rd, assumpsit. The plea was one of prescription of five years, the note bearing date 11 February, 1875, payable in 90 days, and the action was instituted on the 3rd April 1882. *Per curiam*.—I am with the defendant on the prescription. The judgment was a foreign judgment, and did not interrupt prescription. The judgment is not covered by C. S. L. C. cap. 90. and 40 Vic. cap. 14 of Quebec is posterior to the note under consideration. *Harris & Almour*, 5 L. N. 376, S. C., 1880.

## III. OF BILLS &C.

136. The prescription of bills and notes begins to run only from the expiration of the last day of grace. *Ste-Marie & Stone*, 5 L. N. 322, & 1 Q. B. R. 369, Q. B., 1882.

## IV. OF DAMAGES.

137. An action of damages against a magistrate for false arrest, is prescribed by six

months under Con. Stat. L. C. cap. 101, sec. 7. *Kingston & Corbeil*, 7 L. N. 325, S. C. R. 1879.

138. Case of *Grenier & City of Montreal*, (II. Dig. 601, 156), reported in *extenso*, 25 L. C. J., 138, Q. B., 1880.

139. To an action of damages caused by the construction of a dam, the defendant pleaded the prescription of two years as for a *délit* or *quasi délit*. *Held* that the construction of a dam being a legal servitude was neither a *délit* nor a *quasi délit* and the prescription of two years did not apply. *Breakey & Carter*, 7 Q. L. R. 286, S. C., 1881.

140. Where the damages asked for do not result from an offence, or quasi offence, but merely claims the the price or value of materials wrongfully taken away, the prescription of two years does not apply. *Robert & The City of Montreal*, 4 L. N. 292 & 2 Q. B. R. 68, Q. B. 1881.

141. In an action of damages for libel, *held* that the prescription of one year as to libel contained in a pleading runs only from the date of the final judgment. *Hall & the Mayor &c. of Montreal*, 6 L. N. 155 & 27 L. C. J. 129, Q. B., 1883.

142. Where to an action of damages for obstruction and deterioration caused by the passage of a railway through the streets of Quebec, the defendant pleaded *inter alia* the prescription of six months since construction. *Held* that prescription did not begin to run until the damage had ceased. *Renaud & Corporation of Quebec*, 8 Q. L. R. 103, S. C., 1881.

## V. OF INTEREST.

143. To an action on a hypothec, accompanied by a demand for accrued interest registered since that date, the defendant pleaded the prescription of five years and tendered accordingly. Plaintiff answered in law that all arrears up to March, 1880, had been capitalized by registration under Art. 2125 C. C. (1) and that therefore the five year's prescription did not apply. *Held* that all arrears of interest, beyond five years, prior to the institution of the action were prescribed, notwithstanding the registration and the fact that payments had been made on account. *Macdonald & Lériger*, 26 L. C. J. 303, S. C. R., 1882.

## VI. OF LOAN.

144. A loan which is not of a commercial nature is not prescribed by five years and action may be brought on it though a *bon*

(1) The creditor has a hypothec for the remainder of the arrears of interest or of rent from the date only of the registration of a claim or memorial specifying the amount of arrears due and claimed. Nevertheless, the arrears of interest due at the time of the first registration and therein specified are preserved by such registration. 2125 C. C.

(1) I Dig. 996-570.

or a note given for it is prescribed. *Macdonald & Dillon*, 6 L. N., 291 & 27 L. C. J. 214, S. C. & 388, S. C. R., 1883.

#### VII. OF MUNICIPAL TAXES.

145. The demand was for assessments due on real estate for the year 1875, amounting to \$780. The defendants pleaded prescription of three years under the Municipal Code, art. 950. The evidence showed that a triennial valuation roll was made in 1875, in virtue of which, a building of defendants, situate within the municipality, was taxed to the amount of \$730.15. On the 1st October, 1875, the taxes were payable and were not paid. There were new taxes for 1876, and 1877, which were not paid, and in January, 1878, in order to avoid the prescription which would be acquired for the taxes of 1875, action was brought. *Per curiam*.—The pretension of the plaintiffs is that the seizure of January, 1878, which comprehended the taxes of 1875, interrupted the prescription for these taxes. On the other hand, the defendants do not say that the seizure was only for the taxes of 1876 and 1877. But it is plain that the prohibition only affected the roll of 1876, and not the roll of 1875, now in question. There was nothing to prevent the seizure and sale for the taxes of 1875. There was nothing in the written prohibition to prevent the legal proceedings for the recovery of the taxes of 1875. The prescription, therefore, ran against these taxes, the prohibition notwithstanding. Prescription maintained. *The Corporation of Hochelaga & Hogan*, 5 L. N. 154, S. C., & 358, S. C. R., 1882.

#### VIII. OF OBLIGATION.

146. *Per curiam*.—The claimants were collocated under an obligation of date 28th January, 1863. The collocation was contested on the ground of payments made. The proof of payment was based upon a clause of the obligation which declared that promissory notes were given as additional and collateral security, and upon payment of said notes the obligation should be extinguished. The contestants, relying upon C. C. P. 181, say that the lapse of time and the giving up of the notes of Cinq Mars & Co., which were endorsed by the debtor of the obligation, is an extinction of the obligation. The creditors say that they gave up the notes as being of no use. The judgment under review held that the lapse of time necessary to prescribe the notes was not sufficient of itself to extinguish the obligation. The majority of the Court here hold with the Court below that something more than the lapse of five or six years is necessary to extinguish a title of indebtedness so important as one evidenced by a notarial obligation. *Brien v. Cinq-Mars*, S. C., 1881.

#### IX. OF TAXES.

147. The claim of the lessor against the lessee to recover taxes which are made a part of the rent by the lease, is prescribed by five years. *Ouimet & Robillard*, 5 L. N. 8 & 27 L. C. J. 227, S. C., 1881.

148. The municipal taxes of the City of Montreal are prescriptible only by thirty years. *City of Montreal & Geddes*, 5 L. N. 203, S. C., 1882.

#### X. OF WAGES.

149. Where the plaintiff hired in the family of the defendant as governess and on an understanding that she was to be considered as one of the family, and not as a servant, and to be compensated as such.—*Held*, that her claim for salary was not prescribed by the short prescription of Arts. 2261 & 2262, C. C. *Karch & Lemaire*, 28 S. C. J. 233, C. R., 1879.

150. And the prescription mentioned in those articles runs only against claims which are fixed and determined. *Ib.*

#### XI. POSSESSION OF TEN YEARS.

151. Hypothecary action against defendant for \$300 due since 1856, being the price of sale of an immoveable in the possession of defendant under a deed to him registered shortly after the sale from plaintiff. Plea that he had acquired the property by translatory title from his father, for valuable consideration, and that he had had peaceable and public possession of it for more than ten years before the institution of the action. Plaintiff proved that the property was in possession of defendant. The latter made no proof.—*Held* that the defendant should have proved his possession for ten years, under 2251 C. C. *Mitchell & Champagne*, 7 Q. L. R. 315, S. C. R. 1881.

#### XII. RIGHT OF CREDITOR TO PLEAD.

152. Prescription of taxes may be invoked by a hypothecary creditor, though the debtor have renounced the benefit of it. *Les Commissaires d'Ecole & Desmarreau*, 6 L. N. 82, S. C. R. 1882.

153. The possessor who invokes the prescription of ten years, or even of 30 years, cannot prescribe against his own title or the title of him to whom he succeeds. *Cloutier & Jacques*, 10 Q. L. R. 44, Q. B. 1884.

#### PRETE NOM.

L WIFE CARRYING ON BUSINESS AS PRETE NOM FOR HUSBAND, *see* CAPIAS SEQUESTRATION.

## PREUVE AVANT FAIRE DROIT.

I. APPEAL FROM ORDER OF, *see* APPEAL.PREVENTION OF CRIMES ACT—*See* CRIMINAL LAW.PRIESTS—*See* CLERGYMEN.

## PRISONERS.

I. ACT TO AUTHORIZE TRANSFER OF PRISONERS FROM ONE GAOL TO ANOTHER IN CERTAIN CASES, *see* C. 47 VICT., CAP. 44.

II. IMPERIAL ACT RESPECTING THE REMOVAL OF PRISONERS FROM HER MAJESTY'S POSSESSIONS OUT OF THE UNITED KINGDOM, *see* C. 48-49 VICT., PAGE IV.

## PRIVILEGE.

- I. FOR HOUSEHOLD SUPPLIES.
- II. OF COMMERCIAL TRAVELLERS.
- III. OF CROWN.
- IV. OF DERNIER EQUIPEUR.
- V. OF SURETY.
- VI. ON PROPERTY OF PERSONS DECEASED.

## I. FOR HOUSEHOLD SUPPLIES.

154. The opposant claimed to be paid out of the moneys levied from the sale of the moveable property of defendant, the sum of \$237.46, for coal supplied to defendant at his domicile during the last twelve months before the seizure. *Per curiam*—There is no difficulty under the French Code, Art. 2101. It is there held that the fournisseur de subsistances is entitled to the privilege (*Vide* *Marcade* No. 92). Our Art. C. C. 2206 uses the word "provision" in both versions, and the meaning in both is the same. *Bescherelle* in his dictionary *vo. "Provision"* defines it as "*nom collectif de tout ce qui est compris dans la consommation alimentaire, l'usage et l'entretien de la vie domestique.*" There can be no difficulty in saying that the rule should be here as in France, and the privilege should hold. *The Exchange Bank of Canada & Murray*, 4 L. N. 139, S. C. 1881.

## II. OF COMMERCIAL TRAVELLERS.

155. The opposant claimed \$572.80 *pour ses gages et salaire comme commis voyageur à l'emploi du défendeur, à raison de cinq piastres par jour, plus deux per cent sur les ventes*, and to be paid by privilege under 2006

C. C. (1) *Held*, rejecting the claim as to privilege, that a commercial traveller was not a "clerk" within the meaning of that article. *Ross v. Fortin*, 8 Q. L. R. 15 & 11 R. L. 337, S. C., 1881.

## III. OF CROWN.

156. The privilege of the Crown, for arrears of life rent, is like that of individuals restricted to five years and the current year. *Banque Nationale & Davidson*, 8 Q. L. R. 319, S. C., 1881.

## IV. DERNIER EQUIPEUR.

157. Appeal from a judgment dismissing an attachment before judgment, issued at the instance of appellant, against the steamer *Milford*. The attachment was issued for furnishing the steamer for her last voyage. The attachment had been dismissed in the Court below, as regards the respondent. The Court was unanimous that the judicial sale of the vessel purged the privilege for furnishing before the date of the sale. After the sale, C., the former owner, had been allowed to remain in possession with the knowledge of B who became the purchaser at the judicial sale. C. must be assumed to have had authority to bind the vessel for furnishing and repairs, seeing he was allowed to remain in possession for four of five months, and the attachment must be maintained. The amount proved was \$115, for which the *saisie-arrest* must be declared good and valid. *Robert & Beard*, Q. B., 1882.

## V. OF SURETY.

158. On a contestation of a dividend sheet made of the estate of an insolvent, it appeared that the claimant, the Guarantee Co., was jointly and severally liable with the insolvent and having paid, was seeking to recover *au marc la livre* with the other creditors that which it had paid. *Held*, that as it was debtor *in solido* with the insolvent, it could not be allowed to rank concurrently with the other creditors, and the dividend sheet must be reformed accordingly. *Paquet & Canada Guarantee Co.*, 4 L. N. 229, S. C., 1881.

## VI. ON PROPERTY OF PERSON DECEASED.

159. Privileges on moveable property are preserved without any formality after the death of the holder as long as the property of the succession may be distinguished from that of the heir. *Bachand & Bisson*, 12 R. L. 11, S. C., 1881.

(1) "Clerks, apprentices and journeymen are entitled to the same preference, but only upon the merchandise and effects contained in the store, shop or workshop in which their services are required." 2006 C. C.

## PRIVILEGED COMMUNICATIONS.

I. WHAT ARE, *see* EVIDENCE, LIBEL.PRIVITY OF CONTRACT—*See*  
CONTRACT.

## PRIVY COUNCIL.

I. APPEAL TO, *see* APPEAL.

## PRIZE FIGHTING.

I. ACT RESPECTING, *see* C. 44 VIC., CAP. 30.

## PROCEDURE.

## I. ALTERATION OF RECORD.

## II. AMENDMENT OF.

## III. BILL OF PARTICULARS.

## IV. COMMISSION ROGATOIRE.

## V. DELAYS IN.

## VI. DESCRIPTION OF PARTIES.

## VII. DISCONTINUANCE.

## VIII. ENQUÊTE.

*Revision of objections at.*

## IX. EXCEPTIONS.

*Declinatory.**Delay to file.**Dilatory.**To the form.*

## X. EXHIBITS.

## XI. FAITS ET ARTICLES.

## XII. FIAT.

## XIII. INCIDENTAL DEMAND.

## XIV. INSCRIPTION.

*For proof and hearing.*

## XV. IN TERM.

## XVI. INTERROGATOIRES SUR FAITS ET ARTICLES.

## XVII. JUDICIAL OATH.

## XVIII. MOTION.

## XIX. NOTICE.

*Of action.**Of petition.*

## XX. PETITIONS.

## XXI. PLACE OF ACTION.

## XXII. REPRISE D'INSTANCE.

## XXIII. RETURN.

## XXIV. SERVICE OF BANKS AND OTHER CORPS.

*Of certiorari.**Of corporations.**Of incidental demand.**Return of.*

## XXV. SIGNATURE OF ATTORNEYS.

## XXVI. STAMPS.

## XXVII. TERMS OF COURT.

## XXVIII. TO SET ASIDE A STATUTE.

## I. ALTERATION OF RECORD.

160. Petition by plaintiff complaining that certain words and figures had been unlawfully inserted in the opposition of Smart, after the filing thereof and praying that said words and figures be rejected. Plaintiff had taken in execution four lots of land under the subdivision numbers 27, 30, 31 of off No. 159, E. and off No. 160 of the plans of the village of Côte de la Visitation. The complaint was that the opposant, by his opposition, filed on the 14th August, had opposed the sale of three of the lots. Viz: 27, 13 & 160; that subsequently to 8th 1880, the marginal note on the *verso* of first page, viz: "and of lot 30 and 159 E.": the marginal note of the *recto* of the second page of said opposition, viz "30 & 31", and the marginal on the *verso* of second page of said opposition, viz: "and of 30 of 159 E." had been illegally and fraudulently made and written since 8th Sept. 1880, and all said words were false and forged and that the figures 30 in the middle of the 10th line of the *recto* of the second page of said opposition were also false and forged and made over the figures "27" since 8th September, 1880. On proof, petition granted. *Bélanger & Contant*, 4 L. N. 373, S. C. 1881.

## II. AMENDMENT OF.

161. Where an action is brought in the district of Montreal, for libel in another district, and the defendant excepts to the jurisdiction the plaintiff will not be allowed to amend by alleging publication in the district of Montreal. *Senécal & La Compagnie d'imprimerie de Québec*, 2 Q. B. R. 57 & 4 L. N. 414, Q. B. 1881.

162. Exception to the form on the ground that the writ had been issued unsigned. Plaintiff moved for an order upon the prothonotary to affix his signature, and that plaintiff on payment of costs of exception be permitted to serve upon defendant a copy of the amended writ and declaration notwithstanding 46 & 51 C. C. (1) and after conference with four other judges, motion granted. *Perras & Goyette*, 4 L. N. 306, S. C. 1881.

163. Motion for leave to appeal from interlocutory judgments on two motions. The first motion was by plaintiff, to correct a clerical error by effacing the words "de Circuit" and replacing them by the word "Supérieure." The other motion, also by plaintiff, was to allow plaintiff to serve defendant with a duly certified copy of the writ, the copy served not being certified. Both these motions were accorded on payment of the costs incurred on the *exception à la forme* previously filed by

(1). The formalities mentioned in articles 46, 48, 49 and 50 are required on pain of nullity. 51 C. C. P.

defendant. Leave to appeal refused. *Thérien & Wadleigh*, 1 Q. B. R. 300, & 4 L. N. 100, Q. B. 1881.

164. The allowance of amendments to the writ and declaration is not subject to a fixed rule. The Court, in its discretion, will grant or refuse permission to amend, as may best tend to the furtherance of justice. *Seery & St. Lawrence Grain Elevating Co.*, 5 L. N. 403, S. C. 1882.

165. Where the copy of a writ, by clerical error, purported to have been signed by the attorney of plaintiff, instead of by the prothonotary in the original and exceptions were filed. Judgment maintaining the exceptions and refusing motion to serve correct copies reversed, and motion to serve correct copies granted. *Bourdon & Picard*, 5 L. N. 175, & 27 L. C. J. 139, & 11 R. L. 549, S. C. R. 1882.

### III. BILL OF PARTICULARS.

166. Particulars can be had of an exception of payment or other such plea, on the same ground that particulars can be obtained of the plaintiff's demand. *Lachance & Crépault*, 9 Q. L. R. 368, S. C. 1883.

### IV. COMMISSION ROGATOIRE.

167. *Commission rogatoire* will not be granted after the expiration of the ordinary delays, unless sufficient reasons are given to satisfy the judge that the party demanding it is in good faith. *Dessaulles & Higginson*, 12 R. L. 665, Q. B. 1865.

### V. DELAYS IN.

168. Where a writ was returned on the 28th August—*Held* that the return could not be considered to have been made on the 1st September, but that delays to plead commenced to run on that day, and therefore an exception to the form, filed on the 6th September, the 5th being Sunday, was too late. *Beausoleil & Methot*, 7 Q. L. R. 257 C. C. 1880.

169. In cases of injunction, not under the Injunction Act of 1878, but under the Code, the delay on summons is the same as in ordinary suits. *Black & Stoddart*, 4 L. N. 282, Q. B. 1881.

170. If the fifteenth day before the day fixed for the sale of real estate be a holiday, oppositions to the sale may be filed on the fourteenth day before the day fixed for the sale. *Boivin & Welsh*, 7 Q. L. R. 293, S. C. 1881.

171. And if the eighth, which follows a judgment is a non-judicial day, the deposit for revision may be made on the ninth day, and an inscription produced on the tenth day is good. *Hingston & Larue*, 7 Q. L. R. 306, S. C. R. 1881.

172. Where a foreigner is, for the time being, in the Province of Quebec, and while there is served with a writ of summons, the delay

should count from the place of summons and not from the place where the defendant lives. *Dudevoir & Archambault*, 12 R. L. 645, S. C. 1883.

173. And the delays to call in guarantors under Art. 123 C. C. P. (1) do not run during the long vacation. *Bank of British North America & Whelan*, 7 L. N. 311, & 12 R. L. 647, S. C. 1884.

174. The delay of eight days to plead to the merits, provided by Art. 137 C. C. P. (2) when a declinatory exception has been filed, commences to run only from the judgment on the exception, and a demand of plea given the day after the judgment on the exception is null, and a fore closure taken seven days after the demand was set aside as irregular. *Dauphinais & Bibeau*, 11 R. L. 498, S. C. 1882.

175. The delay of service of a petition *en nullité de décret*, is the same as on an ordinary summons as regulated by Art. 75 of the Code of Procedure. *Brown & Demers*, 7 L. N. 312, S. C. 1883.

176. Lorsque la loi permet de faire une procédure jusqu'à l'expiration d'un nombre donné de jours, le délai accordé doit être franc, et il n'est censé expiré que le lendemain de son échéance. *Lavoie & Gaboury*, 7 L. N. 378, & M. L. R. 1 S. C. 75, 1884.

177. *To plead*. The action was returned on the 16th of February. The defendant appeared on the 17th. On the 26th (the 25th being Sunday), plea was demanded, and on the 2nd March, the defendant was foreclosed, and the plaintiff inscribed for *enquête ex parte*. The defendant now moved to have the foreclosure and inscription removed, and that he be allowed to file his plea (produced with his motion). He submitted that the plea had been demanded before the expiration of the eight days from day of appearance. The foreclosure was set aside. *Brown & Magor*, 6 L. N. 122, S. C. 1873.

178. And, where the delay to file preliminary pleas, under Art. 107 C. C. P. expires upon a Sunday, Art. 24 C. C. P. is held to apply, and the defendant is allowed to file his preliminary pleas on the next following day. *Canada Investment Company & Mc Macpherson*. 6 L. N. 138, S. C., 1833.

179. Where the defendant was sued in damages for false arrest, in having the plain-

(1) The delay allowed to call in warrantors is eight days after service of the principal demand, exclusive of whatever time may be required to summon the warrantors pursuant to the provisions of Art. 75. C. C. P. 128.

(2) All pleas to the merits, whether by exception or otherwise, must be filed within eight days after the appearance, except in the cases otherwise provided for in the preceding section. If they are not filed within such delay, the adverse party may demand them, and if they are not filed within the three next following judicial days, the prothonotary may grant the plaintiff a certificate of foreclosure. 132 C. C. P.

that the plaintiff before instituting the present suit, instituted two actions against the defendant for the same debt which were not returned, and the plaintiff obtained *congé défaut* in both of them with costs amounting to \$14, which had not been paid. Plaintiff demurred. *Held*, in review, confirming the judgment of the Court of first instance, that the failure to return a writ of summons is not a discontinuance within the terms of Art. 453 of the Code of Procedure (1) which requires that the costs of the first action be paid before a second one can be brought. *Hossack & Paradis*, 7 Q. L. R. 234, S. C. R. 1881.

#### DESCRIPTION OF PARTIES.

180. On a demand for prescription, the prothonotary's certificate set out a case against "Geo. Benister" whereas in the action and motion, the defendant was described as "Geo. Bemister". *Held*, the proceedings were *de rigueur*, and the variance was fatal. *Burland-Desbarats, Lithographic Co. & Bemister*, 4 L. N. 101, S. C. R. 1881.

181. But in another case.—*Held* that the omission of a letter in the name of the plaintiff, in the prothonotary's certificate of last proceeding cannot be set up as a bar to peremption, and that the Court would order that the certificate be amended. *Saunders & Heres*, 6 L. N. 68, S. C. R. 1883.

182. In an action by one Homer Baker, against the appellants, a municipal corporation, pleaded that the authority of the Council was to purchase from Messrs "Omer & Baker." *Held*, to be *idem sonans*. *Corporation of L'Assomption & Baker*, 4 L. N. 370, Q. B. 1881.

183. The action was to set aside a deed of sale by one of the defendants to the female defendant. An exception *à la forme* was pleaded by the latter on the ground that her name is Henriette Renault Blanchard, and not Henriette Raineauld, as described in the writ. As that was the name in the deed. *Held* that the defendant had no ground of complaint, and exception dismissed. *Hudon & Raineauld*, 6 L. N. 107, S. C. R. 1883.

184. The writ gave only one christian name in full, the second being represented by the initial letter. Exception to the form was filed, and on motion, plaintiff was allowed to supply the full name. In review, after a very full discussion.—*Held* that the nullity was only relative and could be amended in the manner allowed. *Day & Trial*, 9 Q. L. R. 370, S. C. R. 1883.

185. Plaintiff sued in his quality of tutor to the minor children issue of his marriage with the late M. D. Exception to the form filed on the ground that the writ and declaration did not contain the names and first names of the children, for whom the tutor was acting. Exception dismissed. *Charbonneau & Charbonneau*, 7 L. N. 96, S. C. R. 1884.

186. But where the action is by a married woman, separate as to property, the description must state in what way she is separate. *Prosser & Creighton*, 7 L. N. 104, S. C. R. 1881.

#### VII. DISCONTINUANCE.

187. Action on a promissory note. Plea

that the plaintiff before instituting the present suit, instituted two actions against the defendant for the same debt which were not returned, and the plaintiff obtained *congé défaut* in both of them with costs amounting to \$14, which had not been paid. Plaintiff demurred. *Held*, in review, confirming the judgment of the Court of first instance, that the failure to return a writ of summons is not a discontinuance within the terms of Art. 453 of the Code of Procedure (1) which requires that the costs of the first action be paid before a second one can be brought. *Hossack & Paradis*, 7 Q. L. R. 234, S. C. R. 1881.

188. A party who has inscribed in review, may discontinue and withdraw the inscription in review, even after the case has been taken *en délibéré*, so long as the judgment has not been pronounced, and a motion to that effect will be granted. *Baxter & Dorion*, 10 Q. L. R. 105, S. C. R. 1884.

#### VIII. ENQUÊTE.

189. Where a party has been regularly foreclosed at enquête, being in default to proceed he has no right to have it re-opened, and on an inscription in review, the judgment on the merits after such foreclosure, was held to be right. *Leclerc & Mutual Life Insurance Company*, 4 L. N. 349, S. C. R. 1881.

190. Where a party inscribes at enquête and merits under Art. 317, C. C. P. he must give notice to the other party. *Guilbeault & Vadenais*, 1 Q. B. R. 228, Q. B. 1881.

191. Plaintiff inscribed for enquête as follows. "We hereby inscribe this cause on "the *role d'enquête* for the adduction of evidence on the 6th day of July next 1881." Defendant objected to such inscription and moved its rejection on the ground that it was forcing him to enquête *au long* without his consent, notwithstanding arts. 263, 284, 288 & 289 C. C. P., and the tenor of recent legislation which had been to restrict this mode of taking evidence.—*Held* by two or three judges in the course of the same enquête that the inscription was good and the judgment at enquête could order a clerk to take down the evidence in the ordinary manner. *Gregory & The Canada Improvement Company*, 4 L. N. 390, S. C., 1881.

192. The cause was inscribed for enquête and merits for the 15th March. The Court of Appeal opened the same day. The defendant applied to have it postponed stating that the plaintiff could not force him to proceed while the Court of Queen's Bench was sitting. He referred to Art. 238 C. C. P. (2) as amend-

[1] A party who has effected a discontinuance cannot begin again unless he previously pays the cost incurred by the opposite party upon the suit or proceeding discontinued. 453 C. C. P.

[1] The majority of the judges in the districts of Quebec and Montreal, or the judge in each of the other

tended that the Art. applied only to inscriptions for proof and not for proof and hearing at the same time.—*Held*, that the Art. was applicable to both cases, and while the Court of Queen's Bench, appeal side, was sitting a party could not be forced to proceed either at enquête au long or at enquête and merits. *Guarantee Insurance Company & Bethune*. 5 L. N. 93, S. C., 1882.

193. It is not competent to any party in a cause to inscribe for the adduction of evidence at length without the consent of all the parties. *Exchange Bank & Craig*. 7 L. N. 390, & M. L. R. 1 Q. B. 39, & 28, L. C. J. 118, 1884.

194. *Revision of objections at*.—The enquête in an action under a fire policy was taken by commissioner, and objections to the ruling of two commissioners were made, but no proceedings taken on the objections.—*Held*, on a motion at the hearing on the merits, that the délibéré be discharged and the enquête re-opened; that the application was too late and judgment for plaintiff. *Leclerc & Mutual Fire Insurance Company of Joliette*. 4 L. N. 221, S. C., 1881.

#### IX. EXCEPTIONS.

195. *Declinatory*.—A declinatory exception will not lie on the ground that the defendant was only in the jurisdiction for the purpose of giving evidence when he was served with summons and was brought there by subpoena. *Bruneau & McCaffrey*. 7. Q. L. R., 364, Q. B., 1881.

196. Declinatory exception on the ground that the contract of hiring, alleged between the parties, was not made in this Province but in the province of Ontario, and that the service which was a personal service in Montreal, did not bring the defendant before the court so as to give it jurisdiction.—*Held*, distinguishing the case from *Gosset & Robin*. (1) that the action was a personal one and the personal service in Montreal gave jurisdiction. *Lafrance & Jackson*. 4 L. N., 60, S. C., 1881.

197. *Delays to file*.—Motion to reject exception to the form. Action returned 28th of August. Exception filed 6th September, the 5th being Sunday. Defendant pretended that under Art. 463 (2) the return in vacation is to be deemed made only on the 1st

districts, from time to time, may, by a rule of practice, promulgated in open court, set apart such days, in or out of term, as may be deemed convenient for proceeding to proof. In the district of Quebec and Montreal, not less than six days in each month must be set a part for such proof out of term. ed by 35 Vict. Cap, 6 Sec. 8. Plaintiff con-

[1] I. Dig. 53, 395.

[2] In reckoning the delays in matters of pleading on trial the first day of September is deemed to be the next day after the ninth day of July and no party to a cause can be obliged to proceed between those two days without a special order of the Court or judge. 463 C. O. P.

September, that the four days to file preliminary plea begun to run only on the second and that the 5th, being Sunday, Monday the 6th, was the fourth day. *Held* that the 1st September was the next day after the 9th July, only in reckoning delays in matters of pleading and trial, that the day of the return to which, Art. 107 (1) applies was the 28th of August, and that the last day of delay to file preliminary plea was the 4th September. *Beausoleil & Methot*. 7 Q. L. R. 257. C. C., 1880.

198. An action for the recovery, from defendant, of \$1400 penalties alleged to have been incurred by the defendant, for the offence of bribery during an election was returned on the 9th of March, and on the 14th, defendant filed dilatory exception. The plaintiff demurred as a day too late. *Held* that as the 13th was Sunday and therefore a non juridical day, that the exception was properly filed on the 14th. *Joyal & Safford*. 25 L. C. J. 166, S. C., 1881.

199. *Dilatory*.—The merits of a dilatory exception cannot be decided on motion containing the denial with the grounds of the exception. *Bank of British North America & Whelan*. 12 R. L. 626, S. C., 1884.

#### TO THE FORM.

200. A writ of *mandamus* was excepted to for not being signed and for not having been made returnable on the same day as that directed by the judge on the application. Exception held good. *Audy & Les Commissaires d'Ecole, &c.* 8 Q. L. R. 340, S. C., 1882.

201. The truth of a bailliff's return of service of summons can be attacked by exception to the form notwithstanding Arts. 79 & 159 C. C. P. *Standard Fire Insurance Company & Howley*. 27 L. C. J. 193, Q. B., 1883.

202. Action on deed of sale. Exception on the ground that the name of defendant was not correct, although the name in the deed sued on and because the stamps on the writ were not cancelled. Exception dismissed on both grounds. *Hudon & Raineauld*, 6 L. N. 107, S. C., 1883.

203. Where to a bailliff's return the defendant filed an exception to the form and the plaintiff demurred on the ground that the return of a bailliff could only be contested by improbation or motion, the demurrer was dismissed and the answer held good. *Howley & Standard Insurance Company*. 6 L. N. 359, Q. B., 1883.

204. Irregularities which involve the nullity of the proceedings only are susceptible of being attacked by exception to the form, and the rules of practice require only a summary

[2] All declinatory and dilatory exceptions and exceptions to the form which the defendant intends to plead must be filed within four days from the return of the writ except in the cases mentioned in art. 121 [ & 128 ] 107 C. C. P.



statement of the demand, and the plaintiff, who sets up an obligation by a company is not bound to indicate the name of the agent with whom the contract was made. *George & Canadian Pacific Railway*, 12 R. L. 627, S. C. 1884.

#### X. EXHIBITS.

205. The defendant being sued for the price of real estate, refused to pay on the ground that the property sold was subject to a servitude created by an authentic deed recited in the defendant's exception, but of which a copy was not produced with the defendant's pleas. At the enquête, the defendant attempted to prove that the deed in question was destroyed by the burning of the Court House. Plaintiff objected to proof being made of the destruction of the deed, on the ground that it was recited in the defendant's pleadings as a deed still in existence and that the plaintiff in consequence was wholly unprepared to meet evidence such as that offered. *Held* that where a plaintiff fails to file with his declaration the exhibits alleged in support of his demand he may do so afterwards and so long as the position of the parties remains unchanged without leave of the Court and provided notice be given to the opposite party. *Bussière & Gaboury*, 7 Q. L. R. 51, S. C. 1881.

206. But if the exhibits that ought to have been filed with any pleading subsequent to the declaration are not so filed, they cannot afterwards be filed without the consent of the opposite party or leave of the Court. *Id.*

207. If an instrument recited in a pleading was lost or destroyed before the date of such pleading such destruction or loss ought to be alleged. *Id.*

208. According to the 30th Rule of Practice of the Superior Court, when the plaintiff does not produce his exhibits with the declaration he cannot afterwards produce them without giving notice to the defendant, and cannot be foreclosed from pleading before the production of the exhibits. *Guilbault & Vadenais*, 1 Q. B. R. 228, Q. B., 1881.

209. Where a marriage license was not filed at the proper time by the clergyman sued in damages, and was afterwards irregularly produced at enquête, the Court should not have excluded the exhibit altogether, but should have allowed the party an opportunity to file it, after due notice, on payment of costs. *Couture & Foster*, 5 L. N. 302, Q. B., 1882.

210. In an action on an insurance premium note, the defendant moved that before being obliged to plead the Company, (plaintiff) be called upon to produce and file extracts or copies of the formalities observed in calling the meetings at which such resolutions were passed, the losses incurred by the plaintiff during the same period; extracts or copies of notices sent to defendant informing him of the different assessments. Motion granted.

*Canada Mutual Fire Insurance Company & Bastien; Beaver Mutual Fire Insurance & Le-gault*, 6 L. N. 159, S. C., 1883.

#### XI. FAITS ET ARTICLES.

Art. 221 of the said Code is repealed and replaced by the following :

"221. The parties may be examined upon articulated facts, pertinent to the issue, and as witnesses, as soon as the pleas are filed, upon the facts in issue as then joined." Q. 48 Vict. Cap. 20, sec. 8.

211. After a case is taken *en délibéré* the Court may commit a party in default to answer interrogatories *en faits et articles* which have been submitted to him. *Jones & Gwin*, 12 R. L. 599, Q. B., 1866.

212. The Superior Court at Three Rivers, by its judgment which was confirmed in appeal, condemned the appellant to pay to the respondent the sum of \$3090.89 for the balance due on the price and value of railway ties, made and delivered to the appellant, in accordance with a contract signed by his brother and the respondent. In answer to certain interrogatories which referred to all the matters in issue between the parties, the appellant answered either "I do not know" or "I have no personal knowledge." *Held* that such answers are not categorical, explicit and precise as required by Arts. 228 & 229 C. C. P., and that the facts mentioned in these interrogatories must be taken *pro confesso* and proved the plaintiff's case. *McGreevy & Paille* 4 L. N. 95, Su. Ct., 1881.

213. Where an order for *faits et articles* on the defendant had been suspended at her request, and the plaintiff subsequently made a motion that a day be fixed for her to answer. *Held*, that the motion should have been served upon her and not upon the attorney. *Chevrier & Vachon*, 4 L. N. 108, S. C., 1881.

214. Where a party is summoned to answer interrogatories and has not demanded his expenses at the time of the service, he may, nevertheless, on the day on which he is to appear, demand that he be paid before answering. *McGee & Venne*, 12 R. L. 108, S. C., 1882.

#### XII. FIAT.

215. Where neither the fiat for a writ of *execution de bonis*, nor the entry book contained the day of return. *Held*, no ground of opposition by defendant. *DeBellefeuille & Pollock*, 25 L. C. J. 104, S. C., 1881.

#### XIII. INCIDENTAL DEMAND.

216. Where an action in ejectment and for damages, &c., was followed by an incidental demand which omitted to ask for ejectment, and the principal demand was dismissed on a technicality. *Held*, that the incidental demand was sufficiently connected with the principal demand to carry a judgment in ejectment. *Donaldson & Charles*, 4 L. N. 35, Q. B., 1880.

217. Where, during a contestation of a *saisie-arrest* in the hands of the *tiers-saisi*, the plaintiff made an incidental demand, based on rent accrued in the hands of the *tiers-saisi*, since the issue of the *saisie-arrest*, which incidental demand was served on the *tiers-saisi*, but not on the defendant. *Held*, that the defendant was also interested in the incidental demand and should have been served with a copy, and the contestation of the incidental demand on this ground was maintained. *Molson's Bank & Lionais*, 4 L. N. 183, S. C., 1881.

218. Service of an incidental cross demand on the attorneys of the principal plaintiff is sufficient. *Pinsonnault & DeGaspé*, 6 L. N. 160, S. C., 1883.

#### XIV. INSCRIPTION.

219. Where a defendant has appeared in a cause, and been foreclosed from pleading, it is not necessary for the plaintiff to give notice to the defendant or his attorney, of an inscription for judgment out of term under Art. 39 (1) of the Code of Civil Procedure. *Dalbec & Dugas*, 25 L. C. J. 244, S. C. R., 1879.

220. Parties may, by consent, proceed to *enquête* before being heard on demurrer, and the defendant, when he has agreed that the cause be inscribed at *enquête*, cannot complain of the judgment, because he was not first heard on demurrer. *Cimon & Thompson*, 1 Q. B. R. 86, Q. B., 1880.

221. On a motion for leave to appeal from an interlocutory judgment, it appeared that in a case of prohibition the parties neglected to observe the delays prescribed by the Code of Procedure. The plaintiff inscribed the case with a notice of three days. Defendant made default. Plaintiff then inscribed for proof and hearing with a notice of eight days. These inscriptions were both rejected on motion. *Held*, that there was no need of any inscription, that the proceeding were summary, and therefore it was presumed that the parties were present from day to day till the evidence was completed. Leave to appeal granted. *Kerr & Peltier*, 4 L. N. 100, Q. B., 1881.

222. An inscription in Review which had been struck by error was replaced on motion and affidavit, the Court remarking that the better way would be by *requête civile*. *Watson & Smith*, 4 L. N. 402, S. C. R., 1881.

223. In an action on a promissory note, the plaintiff inscribed for proof and hearing at the same time, but when it was called, the inscription was struck on motion of defendant for insufficient delay. The plaintiff there-

upon inscribed the case for proof only and on the day fixed took default against the defendants and inscribed the case for hearing. Defendants moved to have the second inscription set aside on the ground that the case had been inscribed for proof and hearing at the same time, and the plaintiff having thereby declared his option, he could not inscribe otherwise. The motion was rejected and judgment rendered on the merits. In Review, *held*, that the motion should have been granted as although the first inscription had been set aside it remained valid as an option under 243 C. C. P., and judgment reversed. *Delaney & St. Lawrence Steam Navigation Co.*, 8 Q. L. R. 92, S. C. R., 1882.

224. Where an inscription for *enquête* has been filed, the person filing it cannot, without the permission of the Court, withdraw it and file an inscription for proof and hearing at the same time. *Parent & Laplante*, 8 Q. L. R. 335, S. C., 1882.

225. That in the Circuit Court non-appealable, where the action has been returned in vacation, the notice of inscription for proof and hearing on the merits must be given three days at least before hand, even where such notice is given during term. *Neilan & Demers*, 9 Q. L. R. 277, C. C., 1883.

226. Dans une cause où une défense au fonds en droit est produite, l'inscription pour *enquête* et audition en même temps ne peut avoir lieu avant qu'il y ait eu audition et adjudication sur telle défense au fonds en droit, bien que l'une des parties ait déclaré qu'elle entend que la cause soit inscrite en même temps pour *enquête* et audition finale. *Boucher & Dubeau*, 9 Q. L. R. 222, S. C., 1883.

227. The hearing on a writ of *certiorari* can only take place after inscription, according to Art. 1231 C. C. P. (1) *Bombardier & Joly*, 12 R. L. 97, S. C., 1883.

228. Le 11 février 1883, le défendeur a fait signifier au demandeur l'inscription suivante. "Nous inscrivons la présente cause sur le rôle des *enquêtes* pour l'*enquête* du demandeur, pour jeudi le quatorzième jour de février courant." Motion de la part du demandeur se lisant comme suit: "Attendu que le défendeur n'a pas accompagné son inscription de l'avis requis par la loi, attendu que le délai entre la signification de la dite inscription et le jour fixé pour l'*Enquête* (8 jours, Art. 235 C. P. C., sont insuffisants, conclut, etc. Motion granted and inscription struck. *Desrosiers & Lessard*. 7 L. N. 69, S. C. 1884.

229. The service by the defendants on the plaintiffs, of inscriptions upon the special roll for proof and final hearing at the same time, though not immediately filed in the

(1) If, in any action founded upon a bill of exchange, promissory note, *cédule*, cheque, act or private writing, the defendant fail to appear or to plead, judgment may be rendered out of term, upon the written application of plaintiff, without its being necessary to prove the signature to such documents (or to make any other proof).

(1) If the opposite party has not already appeared and filed an appearance in the ordinary form, he may do so, immediately after the writ is regularly returned; and therefore the case may be inscribed on the roll by either party to be heard in the ordinary manner, 1231 C. C. P.

cause, is such an option of that mode of trial, that the plaintiffs could not inscribe this cause on the roll of enquête. *The Merchants Bank of Canada & Charleson et al.* 10 Q. L. R. 48, S. C. 1884.

**For proof and hearing.**—All contested cases inscribed for proof and final hearing, either in the Superior Court, or in the Circuit Court, appealable, shall be tried in the presence and under the direction of the Court, and evidence in all such cases shall be taken by official stenographers who shall be appointed by the Councils of Sections of the Bar, upon the report of a Committee of examiners appointed by such Council. The Councils of Sections shall have power to fix the number and remuneration of such stenographers. The official stenographers shall be officers of the Court and shall be paid from a fund provided by means of fees, to be exacted from the parties producing the evidence. The amount of such fees shall be determined by each section, so as to provide the amount strictly required to pay such fees. This fund, so created, shall be the property of the sections, to which it appertains. The stenographers shall furnish the Prothonotary or clerk of the Court with at least ten copies from a Remington type writer, which copies shall be preserved for use in appeal. Q. 46 Vict. Cap. 26 Sec. 2.

#### XV. IN TERM.

230. On a question whether the Court could proceed to the hearing of a demurrer out of term under 46 Vic., Cap. 26, Sec. 1. *Held* that the 47 Vic, Cap 8, has not repealed 46 Vic., Cap. 26, Sec. 1, so as to deprive the Superior Court of the right of hearing and disposing of proceedings incidental to the hearing and trial of cases on any juridical day. *Léonard & Rolfe.* 7 L. N. 301, S. C. 1884.

#### XVI. INTERROGATORIES SUR FAITS ET ARTICLES.

231. The answer of a party to interrogatories *sur faits et articles* may be divided when they are in consistent and contradictory and also where the statement under oath does not agree with the pleading. *Montpetit & Peladeau.* 4 L. N. 146. S. C., 1881.

232. And where the *aveu* of the plaintiff is required only as a *commencement de preuve par écrit*, it may be divided so as to allow of parole evidence of an amount greater than that admitted and of other amounts alleged to be repaid in part. *Morin & Fournier,* 10 230 Q. L. R. 129, S. C. R. 1884.

233. And when the *aveu* is coupled with a plea of compensation merely it may be divided, but when with a plea of payment merely it is indivisible. *Marmen & Marmen,* 10 Q. L. R. 32, L. C. 1884.

234. But an admission by a defendant under oath, that he received a voluntary deposit but had delivered it as requested, cannot be divided, and verbal evidence is not admissible to contradict the accessory statement of delivery in a case where proof of the deposit could not be made by witnesses. *Dubugue & Dubugue,* 7 L. N. 32, S. C. R. 1883.

235. And in a dispute concerning the existence of a partnership.—*Held,* following *Fulton*

& *McNames* (II. Dig. 307-145) that the *aveu* of the defendant was indivisible, and did not constitute a commencement of proof, in writing and therefore verbal evidence of the partnership was inadmissible. *Pratt & Berger,* 7 L. N. 235 & 28 L. C. J. 192, Q. B. 1884.

#### XVII. JUDICIAL OATH.

236. Action for \$243.32, goods sold and delivered. Plea confession of judgment for \$225, and judgment according to plea. Plaintiff inscribed in Review, and the Court of Review tendered the *serment suppetoire* to him upon his declaration that the whole amount was due, rendered judgment for the amount asked for with full costs.—*Held* that the *serment suppetoire* was wrongly deferred and the judgment of first Court restored with costs against plaintiff. *Daly & Chevrier,* 4 L. N. 82, & 1 Q. B. R. 293, Q. B. 1882.

#### XVIII. MOTIONS.

237. On application for leave to appeal from an interlocutory judgment dismissing a demurrer and special plea.—*Held* that pleas to the merits could not be tested on motion. *Low & Montreal Telegraph Co.,* 4 L. N. 381, Q. B. 1881.

238. A notice of motion given on the 11th, for the 12th, is insufficient, but if the motion is continued to another day, it will be sufficient. *Banque d'Hochelaga & Masson,* 7 L. N. 359, & M. L. R. 1, S. C. 62, 1884.

#### XIX. NOTICE.

239. *Of action.*—Where the presiding officer of a municipal election had refused to grant a poll so that there was no election, and action of damages was brought.—*Held,* on authority of *Pacaud & Quesnel* (1), that as he had acted in bad faith, he was not entitled to a month's notice of action. *Bernatchez & Hamond,* 7 Q. L. R. 25, C. C. 1882.

240. The defendant, a special constable, on duty at the Hochelaga station of the Canadian Pacific Railway, to an action of damages for false arrest, pleaded to the merits that he was a public officer and had not received notice of action under 22 C. C. P., and asked for the dismissal of the action with costs.—*Held* to be a public officer and action dismissed with costs, *sauf à se pourvoir.* *Legault & Lee,* 26 L. C. J. 28, S. C. 1881.

241. But *held* that the want of notice should have been by preliminary exception. instead of merits. *Ib.*

242. Municipal corporations are not a public officer, under Art. 22 C. C. P. (1) and are not

(1) I Dig. 1070-1224.

(1) No public officer or other person fulfilling any public duty or function, can be sued for damages by reason of any action done by him in the exercise of his functions, nor can any verdict or judgment be

...with notice of action. *Dupras*  
... *Hochelaga*, 12 R. L. 35, S. C.

... against a registrar, held to  
... and entitled to notice of  
... return of such notice not  
... regularly signed would, in itself,  
... the action. *Grenier & Grenier*, 8  
... S. C. R. 1882.

... action against a church constable  
... with a person in church and  
... him to kneel.—*Held* that he was  
... officer and entitled to a month's  
... action. *Wilhelmy & Brisebois*, 6 L.  
... & 27 L. C. J. 175, & 12 R. L. 424, C. C.

... Case of *Grant & Beaudry* (II Dig. 623-  
... confirmed in Supreme Court (1). 6 L. N.  
... 17, 1883.

246. Where goods are seized by the Customs  
authorities and the owner wishes to claim  
them, notice in writing of claim must be given  
within one month from the day of seizure,  
under Sec. III of the Customs' Act, 40 Vict.  
(Cap. 10 (1)). *Laurence & Ryan*, 6 L. N. 346,  
S. C. 1883.

247. *Of petition*.—A motion or petition  
given on Saturday, to be presented on Mon-  
day is sufficient. *St-Cyr & Lépine*, 11 R. L.  
342, C. C. 1881.

#### XX. PETITION.

248. Where the City of Montreal, proceed-  
ing to the sale of land for arrears of assess-  
ments, the ownership of which they declared  
was unknown under Art. 900 of the C. C. P.  
(1), presented their petition in Chambers  
instead of the Court.—*Held* null. *City of Mon-  
treal & Loignon*, 4 L. N. 386, S. C. 1881.

249. A proceeding to remove a tutor for  
misconduct in office, should be by writ in the  
ordinary manner, and not by petition. *Daoust  
& Lebeuf* 7 L. N. 69, S. C. 1884.

250. And also a proceeding by a father to  
see his child, after a judgment of separation

fendered against him, unless notice of such suit has  
been given him at least one month before the issuing  
of the writ of summons. Such notice must be in writ-  
ing, it must specify the grounds of the action, must  
be served upon him personally, or at his domicile,  
and must state the name and residence of the plain-  
tiff's attorney or agent. 22 C. C. P.

(1) We are indebted to a controversy between the  
*Legal News* and some of the Ontario journals arising  
out of the remarks of Juge Gwynne in rendering the  
decision for the only notice we have of the judg-  
ment of the Supreme Court in this important case.  
Ed.

(1) When the owner of an hypothecated immovea-  
ble is unknown or uncertain, the creditor to whom  
the capital or two years of the interest (or two years  
of arrears of any constituted or other rent), secured  
by such hypothec is due, may present a petition to  
the Superior Court, praying for the sale of such  
immoveable. 900 C. C. P.

giving the custody of the child to the mother.  
*Pillet & Delisle*, 1b. 78, S. C. 1884.

#### XXI. PLACE OF ACTION.

251. A defendant cannot be joined in a  
suit, in order to bring the suit into a district  
where it would not otherwise lie and there-  
fore where an endorser who was discharged  
for want of notice of protest was joined for this  
purpose, the action was dismissed on declina-  
tory exception. *Baxter & Martin*, 7 L. N. 74,  
S. C. 1884.

#### XXII. REPRISE D'INSTANCE.

252. Where a party summons executors *en  
reprise d'instance*, and files the will appoint-  
ing them as such, he is not obliged to prove  
that they have accepted the position if they  
have only pleaded a *défense en fait* without  
specially denying that they have accepted.  
*Price & Hall*, 1 Q. B. R. 233, 1881.

253. And where such executors have pleaded  
a *défense en fait* that there is already a  
*demande en reprise d'instance* uncontested,  
they cannot avail themselves of such irregu-  
larity. *Id.*

254. A *reprise d'instance* may be made by  
motion as well as by petition. *Banque d'Ho-  
chelaga & Masson*, 7 L. N. 359, S. C. 1883.

255. Where a person, who is winding up a  
partnership resigns, the liquidator who has  
been named in his place, must take up the  
*reprise d'instance* in cases which the first may  
have instituted. *Hochelaga Bank & Lewis*,  
12 R. R. L. 639, S. C. 1884.

#### XXIII. RETURN.

256. An affidavit produced with a motion is  
of no value to contradict the return of the  
bailiff, as to the service of the writ of sum-  
mons. *Baxter & Bruneau*, 12 R. L. 544, S. C.  
1883.

257. The truth of a bailiff's return of ser-  
vice of summons may be contested by excep-  
tion *à la forme*, the conclusions of which  
pray for permission to contest. *Howley &  
Standard Ins. Co.*, 6 L. N. 359, Q. B., 1883.

258. A writ of summons may be validly  
returned after four o'clock in the afternoon,  
provided the office of the clerk be open.  
*Regina & Garon*, 9 Q. L. R. 208, S. C., 1883.

#### XXIV. SERVICE.

259. In an action for separation for bed and  
board, accompanied by a *saisie-gagerie con-  
servatoire*, it is not necessary to serve the de-  
claration at the same time as the writ,  
but it may be served three days after, at the  
Prothonotary's office. *Benoit & Desjardins*,  
11 R. L. 546, S. C. R., 1882.

260. *Of Banks and other Corporations*.—  
Service of summons on a bank or other joint  
stock company should be made at its chief  
place of business. *Baxter & Union Bank of  
Lower Canada*, 7 L. N. 61, S. C., 1884.

261. *Of Certiorari*.—Where one of two commissioners, on whom a writ of *certiorari* was served was the wrong commissioner and the one who should have been served received no notice, *certiorari* quashed on motion. *Belisle Exp.*, 4 L. N. 391, C. C. 1881.

262. *Of Corporations*.—A service at the office and place of business of a corporation is a personal service within the rule requiring a personal service on a *tiers-saisi*. *Beaubien & Fargue*, 12 R. L. 331, S. C., 1883.

263. *Of incidental demand*.—An incidental demand was made under the following circumstances. Immediately at the conclusion of the plea, the defendant opened the incidental demand. "And the said defendant hereby constituting herself incidental plaintiff complains of plaintiff's, now incidental defendants," and declares.—*Held*, that service of such incidental demand on the attorney of the principal plaintiff was sufficient. *Pissonnault & DeGaspé*, 6 L. N. 160, S. C., 1883.

264. *Return of*.—Where in a *qui tam* action, the return of service was excepted to on the ground that the bailiff serving did not say he was a bailiff nor where he resided, but merely signed H. C. S., and said he made his return *sous serment d'office*, *held* sufficient. *Bernard & Gaudry*, 4 L. N. 53, S. C., 1881.

#### XXV. SIGNATURE OF ATTORNEY.

265. Where the *fiat* in a case was signed by one member of a legal firm, and afterwards a receipt of copy of exception to the form was signed by the initials of the firm, instead of the one who had appeared. *Held*, that the Court would take notice that the member who had signed the *fiat* was one of the firm who had signed the receipt of copy, and that therefore the mistake was not ground for rejecting exception to the form. *Municipality of Cleveland & Holmes*, 11 R. L. 551, S. C., 1882.

#### XXVI. STAMPS.

266. Action under \$25. The defendant filed an exception to the form which was settled. On offering a plea to the merits, the prothonotary refused it on the ground that it had not been stamped as provided by the tariff. Motion to compel the prothonotary to receive it unstamped on the ground that the stamp had been placed on the exception and the tariff did not require a stamp on both, granted. *Patenaude & McCulloch*, 25 L. C. J. 164, C. C., 1881.

267. Execution issued from the Superior Court, Montreal, to seize moveables at New Carlisle, District of Gaspé. An opposition to withdraw, supported by affidavit, was served on the seizing officer and then sent to the Superior Court, at Montreal, to be stamped and registered. Plaintiff moved to have the opposition dismissed, because it had not been stamped and registered before being served.

Motion rejected. *Smardon & Hamilton*, 6 L. N. 149, S. C., 1883.

#### XXVII. TERMS OF COURT.

Article 1 of the Code of Civil Procedure, as amended by the acts 37 Vict. Cap. 8, Sec. 6, and 47 Vict. Cap. 8, Sec. 3, is further amended by adding thereto the following paragraph:

"Notwithstanding the preceding provisions, the proceedings under articles 645, 663, 678, 679, 680, 712, 720, 730 and 763 to 780 of this Code, inclusively, may be had upon any juridical day."

1. Every juridical day, shall be deemed a term day, except for the trial of cases in which the principal demand is inscribed:

1. For proof only.

2. For proof and hearing.

The days already fixed in any district for proof or proof and hearing, shall remain set apart for the same object, except that these days may be, from time to time changed, according to the manner now by law establish. This section applies to cases in the Superior and Circuit Courts, Q. 46 Vict. Chap. 26.

With respect to *enquêtes*, in the Districts of Quebec, Montreal, Three Rivers and St. Francis, articles 263 and 264 of the Code of Civil Procedure, and the acts 33 Vict. Chap. 18, 34 Vict. Chap. 4, and 35 Vict. Chap. 6, in so far as they may affect such articles, are amended so that proof may be adduced as follows: a. Without prejudice to articles 263 and 264 of the Code of Civil Procedure, as to the manner of proceeding and the power given to the judge by those articles, the judge may order, and either of the parties may require, that the evidence be taken by means of stenography. b. The stenographers employed shall be appointed by the council of the section of the bar, upon the report of a committee of examiners appointed by the council. c. Such stenographers, after their appointment are considered to be officers of the Court, and are paid, according to the tariff established by the council of the section, by means of fees advanced by the parties producing the witnesses. d. The judge or the prothonotary has the right, before the witnesses are heard, to require from each party a deposit sufficient to meet the payment of the Stenographer's fees, and further to require, if necessary, an additional deposit. e. The notes of evidence are taken by the Stenographer under the direction of the judge, and whenever the judge finds the tariff, established by the Council of the section, insufficient to properly cover the Stenographer's fees, he may himself establish such fees as he deems sufficient. f. The judge may order that the notes of evidence be read to the witness, and corrected, sitting the Court, if necessary. A copy of these notes is made by the transcription of the Stenographer's notes, who then certifies it, and it forms part of the record. g. Upon application by the interested party, the judge who heard the evidence, may order the errors which may be found in the copy, so transcribed, to be corrected, in the manner he may deem proper. The costs of revising and correcting such copy shall be paid by the party found to be in default. h. The judge has power to render judgment without waiting for the transcription of the notes of the evidence. Q. 47 Vict. Cap. 8, Sec. 4.

Sections 1, 2 and 3 of the Act. 46 Vict. Cap. 26 are repealed Q. 47 Vict. Cap. 8, Sec. 1.

Sections 16, 17 and 18 of chapter 78 of the Consolidated Statutes for Lower Canada, and 14, 15, 16, 17 and 18 of chapter 79 of the said Consolidated Statutes and the articles of the Code of Civil Procedure, and the other laws which affect them, are hereby amended so as to include the following provisions:

a. In the District of Quebec.

1. The first five juridical days of each month, and the five juridical following, the fifteenth day of each month shall be days on which the Superior and Circuit Courts, shall sit ;

2. The last four juridical days of each month, are days on which the Superior Court shall sit for cases inscribed in review ;

3. All other juridical days shall be days on which the Superior Court shall be held for cases inscribed for proof and hearing, and if on the termination of the said days, a case for proof and hearing shall be proceeding, the days for proof and hearing shall be continued *de die in diem* for that case only.

4. The third paragraph of article 248 of the Code of Civil Procedure, which enacts, that : "cases inscribed for proof and hearing, have precedence on the days appointed for that purpose, over those inscribed otherwise and fixed for such days", is repealed as far as regards the District of Quebec. *b.* In the Districts of Montreal, Three Rivers and St. Francis :

Every juridical day is deemed to be a term day for the trial and hearing of cases before the Superior Court and the Circuit Court, whether they are inscribed for proof or for hearing, or for proof and hearing at the same time.

However in the Districts of Three Rivers and St. Francis, and in the other districts to which this provision may be made applicable by proclamation of the Lieutenant-Governor, the Superior Court cannot sit during the days fixed for the term of the Circuit Court in the District. In the District of Montreal only, the cases inscribed for proof and hearing at the same time, in the Superior Court and those inscribed in the Circuit Court cannot be inscribed during the days now fixed as days for the sittings of the Courts respectively, or which may be so fixed in the future, in the manner of the law established. Sec. 2.

Article 1, of the Code of Civil Procedure, is amended so that in all the Districts of the Province, except in the cases therein mentioned, the Courts cannot sit between the thirteenth day of June, and the first day of September, in each year, and that in addition, they shall not be obliged to sit between the twentieth day of December, and the fifteenth day of January, nor between the thirty first day of August, and the tenth day of September. Sec. 3.

## XXVII. TO SET ASIDE A STATUTE.

268. To attack the constitutionality of an Act by means of a rule against the Prothonotary is irregular. *Attorney General & Reed.* 26 L. C. J. 331, Q. B., 1882.

## PROCES VERBAUX. — See MUNICIPAL CORPORATIONS.

## PROCURATION. — See POWER OF ATTORNEY.

## PROHIBITION.

### I. FORM OF WRIT.

### II. GROUNDS OF.

### III. PLEADING IN CASES OF.

### IV. PROCEDURE IN CASES OF.

### V. RIGHT OF.

### I. FORM OF WRIT.

269. A writ of prohibition addressed to "*la cité de Hull, corps politiques et incorporé et corporations municipales de la cité de Hull, ayant là, en la dite cité de Hull, son principal établissement, et à Joseph Alfred Champagne, écuyer, Recorder dans et pour la cité de Hull, où il a son domicile, président de la Cour du Recorder, dans et pour la cité de Hull,*" is irregular and will be rejected on exception to the form seeing that the writ should be addressed to the Recorders Court of the City of Hull. *Barrette & La Cité de Hull.* 11 R. L. 500 S. C., 1882.

### II. GROUNDS OF.

270. The Superior Court will not interfere by writ of prohibition to prevent the Recorder of Montreal from hearing and deciding upon a complaint against petitioner in a matter within the jurisdiction of the Recorder. *Hogan Exp.* 7 L. N. 317, S. C., 1883.

### III. PLEADING IN CASES OF.

271. Where a person was convicted by the judge of Sessions of the Peace under the Seaman's Act, 1873. Sec. 86, for having boarded a vessel or ships armed in the port of Quebec without the permission of the master and in contravention of the Act, and asked for a writ of prohibition to prevent the execution of the sentence.—*Held* in Appeal that the petitioner had not shown by his affidavits sufficient grounds for his petition and that an affidavit of the attorney *ad litem*, on general grounds was not sufficient. *Clarke & Chauveau.* 8 Q. L. R. 98, Q. B., 1882.

### IX. PROCEDURE IN CASES OF.

272. In a case of prohibition the plaintiff inscribed for evidence with a notice of three days. Defendant made default. Plaintiff then inscribed for proof and hearing with notice of eight days. Both these inscriptions were rejected on motion.—*Held* that there was no need of any inscription, that the proceedings were summary and therefore it was presumed that the parties were present from day to day till the evidence was completed. Leave to appeal granted. *Kerr & Peltier.* 4 L. N. 100 Q. B., 1881.

### V. RIGHT OF.

273. On a petition in prohibition from a conviction for selling goods by sample in the City of Quebec, without first having procured the license imposed and required by the by-laws of the City.—*Held* that a proceeding in prohibition is neither a revision, nor an appeal from the judgment of the inferior Court on the merits, and no proof can be adduced in prohibition which has not been made in the inferior Court on the question of jurisdiction.

*Piché & Corporation of Quebec*, 8 Q. L. R. 270, S. C., 1882.

274. And prohibition after conviction will not be granted if the objection to the jurisdiction is latent and the petitioner has not specially pleaded and proved it in the first instance but has taken his chance on the merits. *Id.*

## PROHIBITION TO ALIENATE—See WILLS.

## PROMISE OF MARRIAGE—See MARRIAGE.

## PROMISSORY NOTES—See BILLS OF EXCHANGE.

## PROOF—See EVIDENCE.

## PROPERTY.

### I. DESCRIPTION OF.

### II. STOLEN.

### I. DESCRIPTION OF.

275. In an action in revendication of an engine and boiler, one shaft with two pulleys and two collars, a shaft with one pulley and two flayes, one force pump, one cistern pump, one lot of gaspipes and valves, two milkvats, and a number of other articles, forming the plant and machinery of a cheese factory.—*Held*, that moveable things in order to be considered immoveable by destination, must have been placed on the property by the proprietor and for a permanency. *Boyd & Wilson*. 4 L. N. 365, S. C., 1881.

276. The appellants had a number of years previous to the action made a road to their mills of over a league in length and had bridged it with logs and had allowed the public to use it. They had also from time to time renewed the timber and kept it in repair. In 1880, they acquired a strip of land alongside this road, on which they built a new road and used the logs of the old road (or as many of them as were good) for that purpose and threw the bad ones aside. Action possessory by the corporation and for damages. The Court of first instance refused the damages but granted the demand for possession with costs. The defendant appealed, and in appeal.—*Held*, that the appellants having removed the logs which were placed there by themselves, and which were not fastened with nails or iron nor placed there *à per-*

*pétuelle demeure* had in no way disturbed the respondents in their possession of the road which they still retained, and the possessory demand ought to have been dismissed. *Price & Corporation de St. Geneviève*. 8 Q. L. R. 17, Q. B., 1881.

277. Opposition to the seizure and sale of a church organ on the ground that it was placed in the church as a permanency and was immoveable by destination. *Held*, that under the terms of Arts. 375-379 of the Civil Code, that the opposition was well founded and must be maintained. *Binks & The Rector and Church Wardens of the Parish of Trinity*, 25 L. C. J. 259, S. C., 1881.

278. A sale of hemlock bark uncut and standing is a sale of moveables and a commercial transaction. *Fee & Sutherland*, 9 Q. L. R. 55, S. C. R., 1882.

### II. STOLEN.

279. The appellants, the Canada Paper Company, during the winter of 1879-1880, amongst a large quantity of wood purchased, from different parties for the purposes of their paper manufactory in the Village of Windsor Mills, bought 130 cords from a young man named E. M. The respondents alleged that this wood was stolen from them, and that it came into the possession of the appellants unlawfully, and they asked that the wood be given up to them, or that they be paid its value. The Court below maintained the demand. *Held*, that wood cut and sold from land held under a "location ticket" containing a prohibition to cut wood is not stolen property within the meaning of the above article. *Canada Paper Co. & British American Land Co.*, 5 L. N. 310, Q. B., 1882.

## PROTEST.

### I. OF BILLS AND NOTES, see BILLS OF EXCHANGE.

## PROTESTS.

### I. ACT CONCERNING, see OBLIGATIONS.

## PROTHONOTARY.

### I. JURISDICTION OF.

### II. POWERS OF IN MATTERS OF INTERDICTION.

### I. JURISDICTION OF.

280. The prothonotary has jurisdiction to receive a surety bond from the sheriff, in the absence of the judge. *Laurent & Blais*, 11 L. R. 272, Q. B., 1882.

## II. POWERS OF IN MATTERS OF INTERDICTION.

281. The prothonotary of the Superior Court has, under art. 1399 C. C. P., concurrent jurisdiction with the judges of the Superior Court to pronounce interdiction and to create a curator for the interdict, and the sentences he may render in such cases take effect from the day they were rendered, notwithstanding revision or appeal, and during such revision or appeal, the curator, thus appointed, may sue the previous curator *en reddition de compte*. *Clement & Francis*, 12 R. L. 567, S. C., 1881.

## PROVINCE OF CANADA.

## I. DEBENTURES OF.

282. The respondents by petition of right before the Exchequer Court set forth in substance: that the late Province of Canada raised by way of loan a sum of £30,000 for the improvement of provincial highways situated on the North Shore of the River St. Lawrence, in the neighborhood of the City of Quebec, and a further sum of £40,000 for the improvements of like highways, on the South Shore of the River St. Lawrence; that there were issued debentures for both of said loans signed by the Quebec Turnpike Road Trustees, under the authority of an Act of Parliament of the Province of Canada, 16 Vic., Cap. 235, intitled: "An Act to authorize the Trustees of the Quebec Turnpike Roads to issue debentures to a certain amount and to place certain roads under their control"; that the moneys so borrowed came into the hands of Her Majesty and were expended in the improvement of the highways, in the said Act mentioned; that no tolls or rates were ever imposed or levied on the persons passing over the roads improved by means of the said loan of £30,000; that the tolls and loans improve by means of the said loans of £40,000 were never applied to the payment of the debentures issued for the last mentioned loan, in interest or principal; that the Trustees accounted to Her Majesty as well for the said loans as for the tolls collected by them; that at no time had there been a fund in the hands of the said trustees adequate to the payment, in interest and principal, of the debentures issued for said loans; that the respondents are holders of debentures for both of the said loans to an amount of \$90,072, upon which interest is due from the 1st July, 1872; that the debentures so held by them fell due after the Union, and that Her Majesty is liable for the same, under Sec. 111 of the British North America Act, 1867, as debts of the late Province of Canada, existing at the union. In defense Her Majesty's Attorney General did not deny the liability of Her Majesty for the debts of the late Province of Canada, but he denied

that the debentures in question were debentures of the Province of Canada; that the moneys for which they were issued were borrowed and received by Her Majesty, and that there was any undertaking or obligation on the part of the Province of Canada to pay the whole or any part of the said debentures *Held*, affirming the judgment of the Exchequer Court that the debentures in question were debentures of the Province of Canada, and therefore under the provisions of the British North America Act, the Dominion of Canada was liable, but for the capital only of the said debentures, it being provided by Cap. 235, Sec. 7, that no money should be advanced out of provincial funds for the payment of the interest. (1) *Regina & Belleau*, 4 L. N. 92 & 7, S. C., Rep. 53, Su. Ct., 1880.

## PROVINCIAL DEBENTURES.

I. ACT AUTHORIZING *See Q. 45 VICT. CAP. 18.*

## PUBLIC CONTRACTS.

I. PREVENTION OF FRAUD IN RELATION TO *See C. 46 VICT. CAP. 32.*

## PUBLIC OFFICERS.

I. LIABILITY OF.

II. SECURITY TO BE GIVEN BY *See Q. 47 VIC. CAP. 5.*

III. SUPERANNUATION FUND *See Q. 44-45 VIC. CAP. 14.*

283. Action against the License Commissioners for \$426, cost of publishing a list of the licenses "published by them.—*Held* that as they had exceeded their powers in publishing a list that they would be held personally responsible for the debt. *Graham & Sexton*. 12 R. L. 370, S. C., 1876.

284. A returning officer who obtains from the registrar, copies of the lists of Electors for use at an Election, is personally liable for the costs of such list. *Rocher & Leprohon*. 12 R. L. 373, S. C., 1876.

285. But a deputy coroner, who at an inquest employs a stenographer, is not personally liable for his fees. *Cartier & Leprohon*. 12 R. L. 377, C. C., 1383.

(1) Reversed in P. C., 7 S. C. Rep. 205 & 5 L. N. 242, P. C. 1882.



I. COMMISSION ON FEES.

The Act 44-45 Vict. chap. 13, is repealed.

2. Section 2, of the act 43-44 Vict. Chap. 19 is repealed and replaced by the following. "2. Every such officer shall transmit to the Provincial Treasurer, with the return mentioned in the preceding, section twenty per cent of the balance over one thousand dollars of the net amount of the fees received by him for the period covered by such return, after deducting the necessary and unavoidable expenses of the office, which expenses so deducted, shall in no case, for the purposes of this Act, exceed one quarter of the total amount of fees received.

Every person filling two or more offices shall pay the percentage above mentioned on the balances over one thousand dollars of the aggregate net amount of the fees and emoluments of all these offices, so held by him.

When two or more persons hold, jointly, one or more offices, the percentage of twenty per cent, shall be calculated; on the balance of the net amount of fees and emoluments remaining, after deduction of one thousand dollars for each of such persons. "

3. This act shall come into force on the day of its sanction. Q. 44-45 Vict. Chap. 13.

- I. ACT FOR THE BETTER PRESERVATION OF THE PEACE IN THE VICINITY OF C: 48-49 Vic. Cap. 80.
- II. AMENDING ACT C. 47 Vic. Cap. 15.

PUBLIC WORSHIP.

- I. ACT RESPECTING.
- II. DISTURBANCE OF.

Section 12 of Cap. 22, of the Consolidated Statutes for Lower Canada, respecting good order in and near places of Public Worship, is hereby repealed. Q. 47 Vict. Cap. 28, S. 1.

II. DISTURBANCE OF.

286. The plaintiff on behalf of her son, a minor, brought action of damages against the constable of a parish church, for maliciously and improperly interfering with him by ordering him to kneel and otherwise humiliating him in the presence of the congregation. *Held* that the constable was in the performance of his duties in so doing and was not liable. *Wilhelmy & Brisebois*. 6 L. N. 276, C. C., 1883.

Q

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## QUALIFICATION.

I. OF CANDIDATES AT ELECTIONS *See* ELECTION LAW.

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## QUASI CONTRACT.

I. WHAT IS *See* CORPORATIONS.

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I. ACTS RESPECTING *See* C. 45 VICT, CAPS. 47 & 48.

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## QUEBEC, MONTREAL, OTTAWA &amp; OCCIDENTAL RAILWAY.

I. ACTS RESPECTING *See* Q. 45 VIC. CAPS. 2 & 20.

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## QUEEN'S BENCH.

I. APPEAL TO *See* APPEAL.

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QUI TAM ACTIONS, — *See* ACTIONS.

## QUO WARRANTO.

I. QUALIFICATION OF PETITIONER.

II. WHAT IS.

I. QUALIFICATION OF PETITIONER.

1. Petitioner, an elector of the Municipality of the Village of St. Cunégonde, sued the defendant as illegally usurping the charge of Municipal Councillor, and calling upon the defendant to shew by what authority he exercised such charge. Defendant, among other pleas, filed an exception, alleging that the plaintiff, was only a *prête nom* and as such had no right or privilege to act by *Quo warranto*.—*Held*, that he was not rendered disqualified, because other persons had undertaken to pay the costs of the proceedings if otherwise he was a qualified elector of the municipality. *Dubuc & Fortin*. 11 R. L. 114. S. C., 1881.

2. And held also that under articles (317 & 119) of the Municipal Code, that the Councillor whose seat is vacant within the terms of those articles, cannot sit as councillor after proceedings have been taken to replace him. *Id.*

II. WHAT IS.

3. The procedure indicated by Arts. 1016. (1) and following of the Code of Procedure is not a *quo warranto*, but a special remedy granted to individuals against the usurpation and illegal detention of a public office. *Paris & Couture*; *Paris & Brisson, Laliberté & Barabé*: 10 Q. L. R. 1, S. C. R., 1883.

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[1] Any person interested, may bring a complaint whenever another person usurps, intrudes into, or unlawfully holds or exercises :

1. Any public office or any franchise or privilege in Lower Canada.

2. Any office in any corporation, or other public body or board, whether such office exists under the common law, or was created in virtue of any statute or ordinance. Art. 1016.

# R

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## RACE COURSES.

## I. LIABILITY OF PROPRIETOR.

1. The proprietor of a race course is bound to carry out the races according to his programme, and if he does not do so, he will be liable in damages to owners of horses who have entered for the races. *Rouillard vs. Ricard*, 28 L. C. J. 280, C. C., 1872.

## RAILWAYS.

## I. ACT AMENDING DOMINION CONSOLIDATED RAILWAY ACT.

## II. ACT GRANTING SUBSIDIES FOR THE CONSTRUCTION OF.

## III. ACTION AGAINST.

## IV. ANNUAL MEETINGS.

## V. EXPROPRIATION FOR.

## VI. LIABILITY OF.

## VII. MANDAMUS AGAINST.

## VIII. PASSENGERS' TICKETS. C. 45 VICT., CAP. 41.

## IX. PRESCRIPTION OF ACTION AGAINST.

## X. SEIZURE OF.

I. ACTS AMENDING DOMINION CONSOLIDATED RAILWAY ACT, *see* C. 44 VICT., CAPS. 24 & 25; C. 46 VICT., CAPS. 24 & 86; C. 47 VICT., CAP. 11.

II. ACT GRANTING SUBSIDIES FOR THE CONSTRUCTION OF, *see* Q. 45 VICT., CAP. 23.

## III. ACTION AGAINST.

2. *Per curiam*.—In this case an action of damages was brought by the respondent, for expulsion from a sleeping-car berth. If the allegations were proved it would appear to be an extraordinary outrage. The respondent, after taking a ticket for a sleeping-berth, from New York to Montreal, and paying for it, was put out of the car. It was one of those things for which a company should be held strictly responsible. But at present, the case came up, not on the merits, but on a judgment dismissing two preliminary pleas. The action had been served on the Company's alleged agent in Montreal. The question had been raised whether Mr. V. was an agent. It was proved that he sells tickets like that sold to respondent. He had an office in Montreal, and was publicly advertized as their agent. He also offered to get back the respondent's money for him, when he heard of the difficulty. Upon the whole, this Court was not disposed to disturb the judgment which held the proof of agency sufficient. With regard to the omission to allege where the principal business of the company was, that was not obligatory in the case of foreign companies. The trespass was continuous from New York to Montreal, and was a trespass in Canada. *New York Central Sleeping Car Co. & Donovan*, Q. B., 1882.

## IV. ANNUAL MEETINGS.

3. The annual meeting of the railway company, defendant (a company subject to the provisions of the Consolidated Railway Act, 42 Vict. Cap. 9), did not take place on the day appointed therefore, in consequence of an injunction suspending the holding of such meeting. This injunction was subsequently dissolved at the instance of a shareholder.—*Held*, that service of notice upon the president and secretary, that the injunction had been dissolved, together with a copy of the judgment, dissolving the injunction, was sufficient to put the company *en demeure* to call the meeting, and a mandamus might issue in the name of the shareholder, under C. C. P. 1022, to compel the company to call the meeting (1). *Haiton & M. P. B. By Co.*, 7 L. N. 368, & M. L. R. 1, S. C. 69, 1884.

4 And it was the duty of the board of directors, as soon as the injunction was dissolved, to proceed to call the said meeting, in order that the election of the directors might be held, as provided by sect. 10 of the Consolidated Railway Act (42 Vict. [Can.] cap. 9). *Id.*

5. And the calling of the annual meeting is not a duty specially appertaining to the office of president, the Railway Act (42 Vict. cap. 9) making it the duty of the "directors" to cause such meeting to be held. *Id.*

6. And where the directors omit, neglect or refuse to perform their duty of calling such meeting, to the condemnation under C. C. P. 1025, for failure to comply, will be against the Corporation, and not against the directors personally. *Id.*

## V. EXPROPRIATION FOR.

7. Proprietors have not the right to retain the ownership of land marked on plans as provided by law, for railway purposes, and they have no alternative but to accept the compensation finally awarded and decided upon. *Bank of Hochelaga & Montreal Ry Co.*, 12 R. L. 575, S. C. 1882.

8. But if the proprietors cannot refuse to transfer the property and give possession of it to the railway, much less can they do so or reclaim possession of the property after they have voluntarily allowed the company to take possession and to lay their tracks on it, and the only thing they can legally ask is the compensation which is supposed to represent it, and the only recourse which the creditors of the proprietor have is against such compensation. *Id.*

## VI. LIABILITY OF.

9. The plaintiff sued for the value of a barn and of the hay contained therein, which was standing on his land, in the parish of Boucherville. The railway track passed close to the barn, and it was alleged that the fire had originated from sparks which escaped from the locomotive. The defendants pleaded that

(1) In Appeal.

they were authorized to work the railway by public statute of the province, and that they had taken all possible precautions, and had provided the pipe with an approved appliance for preventing the escape of sparks. That the fire was the result of inevitable accident, and they ought not to be held liable. The Court did not consider that the position assumed by the defendants was tenable. The article of the Code says that every person is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill. His honor cited a case from Dalloz, A. D., 1859, which was exactly in point, and the reasons of which he adopted. The defendants must pay for the damages occasioned by the sparks escaped from their locomotive. Judgment for plaintiff for \$316.50. *Jodoin vs. The South Eastern Railway Co.*, S. C. 1882.

10. Action of damages for the recovery of \$500, brought against the two defendants. Corporation jointly and severally.—*Held* that to maintain an action of damages against a Railway Company, because of the running of the Railway over a public highway adjoining the residence of the plaintiff, and, as alleged obstructing his ingress and egress thereto and from, it is necessary for the plaintiff to prove that immediate access to his premises was prevented, and that he had sustained damages particular to himself and differing in kind from and beyond that of the rest of the public and, that the Municipal authorities having tolerated the laying and using of a railway as a public highway in the Municipality, may be thereby estopped from urging that the use of the same was unauthorized by them. *Brodeur & The Corporation of Roxton Falls*. 11 R. L. 467, S. C., 1882.

11. A railway which by its embankments prevents a flow of water from a property bordering on it will be responsible for the damages caused by the water to such property. *Grand Trunk Railway Company & Landing*. 11 R. L. 590, Q. B., 1882.

12. A horse was found dead near the railway track. There was no evidence as to the immediate cause of death. It was proved that the fence adjoining the track and the gate therein were in good order, but that the gate was often left open by persons passing through it who were not in the service of the railway Company.—*Held* that the company was not liable. *Lambert & Grand Trunk Railway Company*. 7 L. N. 4 & 28 L. C. J. 3, S. C. R., 1883.

13. Action to recover from the Company defendants the value of certain cattle killed on its track by a passing train.—*Held* that where a proprietor allows a road across his land, and the gate opening from it to the track, to be used by the public as a thoroughfare, he will be responsible for the acts of the persons using the road, and the railway company will not be held responsible for the bad condition of the gate, and for the killing of animals passing through it on to the track.

*Jasmin & Canadian Pacific Railway Company*. 6 L. N. 163, C. C., 1883.

14. Case of *Wilson & Grand Trunk Railway* (1. Dig 640—8) judgment reversed in Q. B. 5, L. N. 88 & Su. Ct., 1883.

15. The plaintiff's sleigh, while driving across the track at St. Henri, near Montreal, was struck by a passing train. Plaintiff claimed to have been thrown out by the shock and seriously injured. General negligence on the part of the defendants was also set up for want of lights at the crossing and that the train did not whistle or ring while passing. *Held* that the proof had failed in these particulars and no fault could be imputed to the railway. *Roy & Grand Trunk Railway Co.*, 4 L. N. 211, S. C., 1881, & 8 L. N. 274, Q. B., 1885.

#### VII. MANDAMUS AGAINST.

16. A mandamus will not lie against a railway company to compel it to perform a statutory obligation, such as the obligation to make and maintain crossings on the petitioners property under the Quebec Railway Act, there being the remedy by ordinary action. *Dubuc & Montreal & Sorel Railway Company*, 7 L. N. 5, S. C. R., 1883.

#### VIII. PRESCRIPTION OF ACTIONS AGAINST.

17. Action of damages for the value of a horse killed on defendant's track. The writ issued more than six months after the alleged occurrence. *Held* that the six months prescription under the Railway Act applies to actions for the value of horses or cattle killed on the track. *Anderson & Grand Trunk Railway Company*, 7 L. N. 150, C. C., 1881.

#### IX. SEIZURE OF.

18. On an opposition to the seizure of a railway *held*, reversing the judgment of first instance (1) that railways subsidized by the province under "The Quebec Railway Act 1869" are liable to seizure and sale by ordinary process of law. *Wason Manufacturing Company & Levis & Kenebec Railway*, 7 Q. L. R., 330, S. C. R., 1886.

19. The railway of defendants was taken in execution by the bank and the opposants who were large bondholder's holding a mortgage on the road, opposed the sale on the ground that the railroad could not, by law, be taken in execution. The plaintiff demurred to the opposition and *Held*, following *Drummond & South Eastern Railway Company* (1) maintaining the demurrer and dismissing the opposition on the ground that the railway could be taken in execution. *Hochelaga Bank & Montreal, Portland & Boston Railway Company*, 4 L. N. 333, S. C., 1881.

(1) Dig. 643-18.

(1) Dig. 643-19

## RAPE.

## I. EVIDENCE OF.

20. Action by the father of J. B. a minor whom he alleged to have been violated by the defendant on the 3rd December, 1881. The act it was said was committed late in the evening while the girl was crossing a field, about three acres from where she lived, and in front of a barn belonging to the defendant. The action was not brought until May or June, 1882, when she was in an advanced stage of pregnancy, and on the 5th September, of the same year, a child was born. At the trial the girl herself was the only witness brought up to prove the alleged rape. The case rested on her unsupported statement, that the defendant, on the occasion in question, seized her and forcibly had connection with her. She made no complaint or disclosure of the circumstance until long afterwards. There was evidence also that her character was not very good. *Held* not proved. *Bigoness & Brunelle*, 6 L. N. 270 & 27 L. C. J. 372, S. C., 1883.

## RATIFICATION.

I. WHAT IS *see* AGENCY. LIABILITY OF PRINCIPAL.REAL ESTATE,—*See* IMMOVEABLES.

## REAL RIGHTS.

I. WHAT ARE *see* USE AND HABITATION.

## REASONABLE &amp; PROBABLE CAUSE

I. WHAT IS *see* DAMAGES FOR FALSE ARREST.RECEIVING STOLEN GOODS, — *See* CRIMINAL LAW.RECEL, — *See* CRIMINAL LAW VERDICT.

## RECEIPT.

## I. INTERPRETATION OF.

## II. PRIMA FACIE PROOF OF PAYMENT.

## III. PROOF OF SIGNATURE.

## I. INTERPRETATION OF.

21. A receipt for a balance of the price of wood sold, constitutes a settlement and cannot be set aside without alleging error or other legal causes of nullity. *Johnston & McGreevy*, 1 Q. B. R. 299, Q. B. 1881.

## II. PRIMA FACIE PROOF OF PAYMENT.

22. In a contestation concerning certain rents.—*Held* that the receipts *sous seing privé* given by B. to the appellant, were *prima facie* evidence that the rent had been paid at the date of the receipt, and that it was for the respondent to establish the contrary. *Baylis & Stanton*, 27 L. C. J. 203, & 2 Q. B. R. 350, Q. B. 1882.

## III. PROOF OF SIGNATURE.

23. A receipt signed with a cross, before two witnesses, is good, and may be proved by the two witnesses, even though one of them signed with a cross. *Querret & Bernard*, 1 Q. B. R. 69, Q. B. 1880.

## RECORD.

I. ALTERATION OF, *see* PROCEDURE.

## RECORDER.

## I. APPOINTMENT OF DEPUTY.

## II. JURISDICTION OF.

## III. QUALIFICATION OF DEPUTY.

## APPOINTMENT OF DEPUTY.

24. Action by certain rate-payers of the city of Montreal against the Corporation, alleging that the defendants, in September, 1880, had obtained certain judgments before the Recorder's Court, by which each of the plaintiffs were condemned to pay to the Corporation, respectively, a proportion of the costs of the construction of a brick drain in St. Lawrence street, according to an assessment *role* made by the Corporation, in virtue of its act of incorporation, and that under such judgments, the Corporation had issued warrants of distress against the plaintiffs. The plaintiffs alleged further that the judgments in question were radically null and of no effect inasmuch as they had been rendered by C. Aimé Dugas, in the capacity of Deputy or assistant Recorder, his appointment to which was altogether illegal, he having been appointed by the Recorder to fill that position during

the illness of the latter, and not being at the time of his appointment an advocate of five years' standing, as required by the provision of the Charter of the city to that end (1); but having on the contrary been for upwards of a year previous to his said appointment, Judge of the Sessions of the Peace for the district of Montreal.—*Held* that the person appointed need not be a practicing advocate, provided he had formerly practiced during five years. *Molson & City of Montreal*, 26 L. C. J. 243, & 8 Q. L. R. 29, S. C. 1882.

## II. JURISDICTION OF.

25. The power given to the Recorder's Court of the city of Quebec, by the Act of Canada. 29-30 Vict., cap. 57, s. 33 (1860), to summarily try persons charged with assault upon peace-officers, in the discharge of their duty, or with aiding a rescue or escape, has not been taken away or superseded by the Dominion Statute 32-33 Vict. cap. 20, S. 39, which also provides for the punishment of such offences all over Canada. *Brunet Exp.*, 9 Q. L. R. 218, S. C. 1883.

26. The petitioner was convicted in the Recorder's Court, under the Summary Trial by consent Act (32-33 Vict., cap. 32) of keeping a disorderly house in the police limits of the city of Montreal.—*Held*, on *habeas corpus*, that the commitment (which followed the terms of the conviction) set forth no offense of which the Recorder could take cognizance, and that sec. 32-33 Vict., cap. 29 was not applicable here, the said section applying only to cases tried on indictment, and where there has been a verdict. *Lefebvre Exp.*, 7 L. N. 258, Q. B. 1884.

## III. QUALIFICATIONS OF DEPUTY.

27. The plaintiff complained by *certiorari* of certain judgments against him in the Recorder's Court, on the ground that the person acting as Deputy Recorder, and who rendered the judgments in question was not an advocate, but was Judge of the sessions of the Peace. The Court *held* that such action could properly be brought by a rate-payer, exposed to be troubled by a judgment radically null, without it being necessary to have recourse to a writ of *certiorari*; but that in this case the nomination of the Judge of Sessions, as deputy Recorder, was valid, Mr. Dugas having formerly practiced as an advocate during more than five years, and not having lost his privileges as such by his appointment as Judge of Sessions. *Molson & City of Montreal*, 5 L. N. 381, S. C. 1882.

(1) The said recorder may, from time to time, by an instrument in writing under his hand and seal, appoint some fit and proper person, being an advocate of the said Province, of not less than five years' standing, to be and act as his Deputy, in the event of his illness or necessary absence from the city.

## REDHIBITORY ACTION — See ACTION.

## REFEREES.

### I. CASES MAY BE REFERRED TO.

The following articles are added to the said Code after article 343.

"343a." Except in actions to annul a marriage, for separation of property, or from bed and board, to obtain the dissolution of a corporation or the annulling of letter patent, or in which the parties are minors or legally incapable, and in all cases of public interest, the Superior Court or the Circuit Court, may, on the written demand of the parties and of their attorneys, *ad litem*, refer all or any of the issues, either of fact or of law, to the decision of one or more practicing advocates, appointed according to the manner determined by the consent.

343b. The referees appointed who do not accept the office shall be replaced by others, and the majority shall be a quorum.

343c. Before proceeding they shall be sworn to well and faithfully perform their duties, either before the judge, the prothonotary, a commissioner of the Superior Court, or the clerk of the Circuit Court, as the case may be.

343d. The trial before such referees is conducted as cases without a jury before the Court, and the referees shall, for such purpose, have all the powers of such Court or judge. The referees shall have power to appoint a clerk to assist them.

343e. All the proceedings in this case are filed in the office of the prothonotary or clerk, as the case may be, of the Court of the District in which they are heard.

In case they are had in a District other than that in which the case was brought, the record shall, upon the order of the referees, be transmitted in the manner prescribed by articles 241 & 242 of this Code.

343f. The report of the referees shall be in writing and be filed within sixty days after the final hearing of the parties, in the office of the prothonotary, or clerk of the Court of the place in which the case was pending, at the time of the appointment of the referees.

In default of which, either party may cause a notice to be served upon the attorney of the adverse party that he intends to end the reference.

Upon the filing of such notice in the office of the prothonotary or clerk, as the case may be, the case is continued as if it had not been referred.

However, the proceedings had, and proof addressed before the referees, form part of the record as if they had been had and taken before the Court.

The Court may also, upon demand of either of the parties, cancel the appointment of the said referees, if they do not proceed with diligence to the hearing of the case.

343g. On the statements of facts and propositions of law which may be submitted by the parties to the referees, it shall be the duty of the latter to decide what are pertinent to the issue and to note in the report their findings on each.

The omission to note the same shall not, however, invalidate the report.

343h. The referees shall further in their report set out the text of the judgment to be drawn up.

343i. On the application to homologate the report, the Court or judge orders that judgment be entered up by the prothonotary or clerk, as the case may be, in accordance with the report.

343j. If the reference is had before three or more referees, and their report is unanimous, the judgment based thereon shall not be subject to review, by

these judges, and the appeal is brought directly to the Court of Queen's Bench.

343k. In Appeal, the Court shall inquire into the merits of the contestation as well as the grounds of nullity of the referee's report. Q. 48 VICT., CAP. 20, SEC. 6.

## REFORMATORY SCHOOLS.

I. ACT RESPECTING *see* Q. 47 VICT., CAP. 24.

## REGISTRAR.

### I. LIABILITY OF.

28. *Case of Trust and Loan Company of Canada & Dupras*, (II Dig. 646-30) reported in *extenso* 25 L. C. J., 239, Q. B., 1880.

29. Action against the Registrar of the registration division of Dorchester, for \$195.95, amount which the plaintiff alleged he had lost by the fault of the defendant, in omitting to mention in a certificate, a hypothec of \$100, and on the strength of which certificate he had purchased the property. Plaintiff alleged also that he had been sued on the hypothec and although he had called in his vendor, judgment had been rendered against the both of them and the vendor was worth nothing. The defendant pleaded a general denial and an exception in which he set up by way of justification that the hypothec was entered during the time of his predecessor in office under the letter B, the debtor's name having been given as *Bonhomme*, whereas he was always known and defendant had always known him by the name of *Dulac*. The Court of first instance rendered judgment against defendant for \$121, amount which plaintiff appeared to have lost, but in Review the judgment was reversed and the action dismissed entirely on the ground of informalities in the notice of action, and more particularly that under the circumstances mentioned by defendant in his special plea, and which were proved, defendant was not liable. *Grenier & Rouleau*, 8 Q. L. R. 323, S. C. R., 1882.

## REGISTRATION.

### I. BEFORE THE CODE.

II. BY MEMORIALS *see* Q. 47 VICT. CAP. 13 SEC. 2.

### III. DEFAULT OF.

### IV. EFFECT OF.

### V. NEGLECT OF.

### VI. OF BAILLEUR DE FONDS.

### VII. OF CANCELLED DEED.

### VIII. OF CONSTITUTED RENTS *see* RENTS.

IX. OF CUSTOMARY DOWER, *see* Q. 46 VICT. CAP. 25, AND Q. 47 VICT. CAP. 10.

### X. OF HYPOTHEC.

XI. OF MARCHANDE PUBLIQUE *see* MARRIED WOMEN.

### XII. OF PRIVILEGES.

### XIII. OF RENTS TRANSFERRED.

### XIV. OF SALE.

XV. OF SERVITUDES *see* Q. 46 VICT. CAP. 25 AND Q. 47 VICT., CAP. 15.

### XVI. PRIORITY OF.

### XVII. PROOF OF CERTIFICATE.

### XVIII. REGULARITY OF.

XIX. RENEWAL OF *see* Q. 47, VICT., CAP. 13, SEC. 1.

### I. BEFORE THE CODE.

30. The registration of a will containing a substitution made in 1853, has not the effect of replacing the insinuation which is necessary and the registration of a substitution should have been renewed within two years of the promulgation of the article of the Code. *Poitras & Lalonde*, 11 R. L. 356, S. C., 1882.

### III. DEFAULT OF.

31. In a petitory action to recover possession of a piece of land of trifling value, situated at River Chaudière, held that in order to invoke priority arising from a want of registration, under Article 2098 of the Civil Code, the title must proceed from the same auteur or vendor. *Cloutier & Jacques*, 10 Q. L. R. 44, Q. B., 1884.

### IV. EFFECT OF.

32. A renewal of registration against cadastral lots, by the original owner of a *bailleur de fonds* claim, for the whole of such claim (of which he had previously transferred a portion, by deed of transfer duly registered) enures to the benefit of the transferor under said deed. *Aitken & Bisailon*, 27 L. C. J. 81, S. C. R., 1882.

33. And in renewing registration against cadastral lots, an error as to the name of the possessor of the property will not invalidate the procedure. *Id.*

34. It is not necessary to re-register a transfer of a hypothecary claim against the cadastral number. *Id.*

### V. NEGLECT OF.

35. The want of registration of a substitution may be invoked by a possessor by particular title duly registered, even though such possessor be the tutor of those called to the substitution, or a person deriving from such tutor. *Terrien & Labonté*, 2 Q. B. R. 90 & 94, Q. B., 1881.

### VI. OF BAILLEUR DE FONDS.

36. T. sold to D. certain real estate in which there remain due to T. \$350. D., before registering his title from T., gave a hypothec to B. for \$85. B's hypothec was regist.



ered 10th April, 1877, and the sale to D. was registered at full length on the 6th November, 1877. *Held*, that under Art. 2098 C. C., (1) the registration of D's hypothec was *without effect* so long as the sale to D. had not been registered; that as the registration of T's *bailleur de fonds* claim was perfected whilst the registration of B's hypothec was still without effect, T's *bailleur de fonds* claim was, in contemplation of law, registered before B's hypothec, and that T., consequently, had a right to be collocated in preference to B. *Racine & Delisle*, 8 Q. L. R. 135, S. C. R., 1882.

37. In another case the prothonotary collocated two creditors *pro rata*, on the principle that the title under which the property mortgaged by the defendant was acquired, was only registered after the registration of the two deeds of mortgage, viz.: on the 3rd November, 1870. On contestation the collocation was set aside and the report of distribution ordered to be amended on the ground that the clause in question, of Art. 2098, contains only a condition *suspending* the right of registered creditors, and that as soon as the deed under which the mortgaged property is acquired is registered, the creditors retain their right of precedence amongst themselves according to the date of the registration of their respective titles. (2) *Renaud & Raymond*, 8 Q. L. R. 149, S. C., 1873.

38. In another case, however, a distinction was drawn between a conventional and a legal or judicial hypothec with respect to the application of the rule in question. In that case, the opposant, in 1864, ceded to the defendant an immoveable property, in consideration of a life rent of \$10, representing a capital debt of \$166.67, and in April, 1873, he ceded to the defendant another immoveable in consideration of a life rent of \$6.00. Both of these transfers remained unregistered until August, 1881. At a judicial sale of the properties thus ceded to the defendant, the opposant filed his oppositions *afin de charge*,

(1) So long as the right of the purchaser has not been registered all conveyances, transfers, hypothecs, or real rights granted by him in respect of such immoveable are without effect. 2098 C. C.

(2) The decisions as to the interpretation of this clause of the Code are rather conflicting. The weight of authority, however, appears to be in favor of the holding in *Racine & Delisle*, which follows *Pacaud & Constant* [II Dig. 650-51]. The decisions which appear to be in conflict with these are not *directly* so. In *Charlebois & La Société de Construction* [II Dig. 647-34], the vendor's title had been registered by the mortgagee for the very purpose of giving effect to the mortgage, but without reference to the vendor's claim; *Adam & Flanders*, [II Dig. 648-41] refers to a hypothec granted by the vendor and not by the purchaser; while the case of *Benaud & Raymond* in the text, though apparently deciding in favor of the mortgagee, by giving to the registration of the purchaser's title a retroactive effect, does not arise in the same way and was not evidently regarded from the same point of view. Ed.

asking that they be sold subject to his lien for the life rent in each case. The plaintiff contested the oppositions on the ground that the claim of the opposant remained unregistered until after the opposition had been filed, and that on the contrary he (the plaintiff) had registered his judgment prior to the seizure. The opposant relied on the clause of the Art. 2098, and cited *Pacaud & Constant*, in support. *Held*, dismissing the opposition and maintaining the pretensions of plaintiff that the ruling in *Pacaud & Constant* did not apply, inasmuch as the plaintiff's hypothec arose from a judgment and was not covered by the terms of the Article. *Vidal & Demers*, 8 Q. L. R. 177, S. C., 1881.

#### VII. CANCELLED DEED.

39. The appellants obtained judgment against one C., — and on the 7th August 1878, took out execution and seized a lot of land in Lachine. The respondent filed an opposition alleging that on the 9th May, 1877, he had sold the lot to C, but that on the 8th May 1878, C, had retroceded it to him, that neither of these deeds had been registered and that C, had no right of ownership at the time the lot was seized. The appellants then discontinued the seizure, but immediately registered the deed from opposant C., and then took out a new writ of execution, and two days later, the opposant registered the deed of retrocession. He subsequently filed an opposition to the second seizure. *Held* maintaining the opposition, that the legal title was not in C, at the time of seizure. *Longpré & Valade*, 4 L. N. 34, & 1 Q. B. R. 15, Q. B., 1880.

#### X. OF HYPOTHEC.

40. On the contestation of an assignee's dividend sheet, *held*, in appeal, confirming the judgment of the Court below, that that portion of Art. 2098, of the Civil Code, which says that "so long as the right of the purchaser (acquirer) has not been registered, all conveyances, transfers, hypothecs or real rights granted by him in respect of such immoveable, are without effect," is applicable to deeds anterior to the Code, and that, without giving a retroactive effect to the Code. *Société Permanente de Construction du District de Montréal & Laurin*, 26 L. C. J. 281, Q. B., 1872.

#### XII. OF PRIVILEGES.

41. The registration of privileges, required by Art. 2106 C. C. (1), applies only to immo-

(1) Creditors and legatees claiming separation of property, procure a right of preference upon the estate of their deceased debtors against the creditors of the heirs, or legal representatives of the latter, pro-

veables. *Bachand & Bisson*, 12 R. L. 11, S. C., 1881.

### XIII. OF RENTS TRANSFERRED.

42. To effect a compromise with his creditors, J. B. gave his notes endorsed by McK, who as security took an assignment of the estate including a property in the City of Montreal. McK leased this property to the appellants J. B. & Son, and subsequently re-conveyed the property to Appellants with right to recover the rents accrued on the same. Subsequently the Respondent was appointed sequestrator of the property in a hypothecary action by C. & Sons against McK and sued the Appellants to recover the rent from date of lease, from McK, to the date of his appointment. The Court expressing strong doubts as to the propriety of the appointment of a sequestrator in such a case, and reversing the judgment of the Court below. *Held*, That the transfer of rent by McK to B. did not require to be registered to enable B. to receive the rents. *Baylis & Stanton*, 2 Q. B. R. 350, & 27 L. C. J. 203, Q. B. 1882.

### XIV. OF SALE.

43. A lot of land, seized at the instance of Plaintiff on the 13th of November, 1879, was claimed by the Opposant, under a notarial deed of sale bearing date the 8th April, 1878, but which was not registered until after the seizure, viz. on the 24th November, 1879. *Held*, that the seizure did not prevent the effectual registration of a deed of sale executed before the seizure. *Drouin & Hallé*, 7 Q. L. R. 146, S. C. 1881.

44. On a contestation arising out of an insolvent estate.—*Held* that the purchaser of an immoveable from the insolvent, long prior to the insolvency, had a good title and could prevent the seizure and sale of the property by the creditors, notwithstanding his title was not registered until after the insolvency. *Grothé & Stewart*, 12 R. L. 218, S. C., 1882.

### XVI. PRIORITY OF.

45. Where a hypothec was granted and registered by the purchaser of an immoveable property before the registration of the vendor's claim.—*Held* that although the vendor's claim was not registered until long after the thirty days it must nevertheless be preferred to the hypothec on the ground that until the vendor's claim was registered, the purchaser was not in a position to grant a valid mortgage. (1) *Chrétien & Poitras*, 7 Q. L. R. 81, S. C. 1881.

vided they register within six months after the death of their debtor, the rights which they have against his succession. Such registration is effected by means of a notice, or memorial specifying the nature and amount of their claims, and describing any immoveables affected thereby. 2106 C. C.

(1) See II Dig. 650-51.

46. Where a hypothec was granted on the 12 May, 1867, and registered on the 20th of the same month, but in the meantime the property had been transferred but not registered until after the registration of the hypothec. *Held* that the title of the owner of the hypothec would rank before that of the transferee, notwithstanding that he was in open and public possession of the property and notwithstanding the provisions of Art. 2088 of the Civil Code) (1). *Bricault & Bricault*, 11 R. L. 163, S. C. 1881.

47. According to the provisions of the last paragraph of Art. 2098 C. C. and 2043 C. C. the hypothec granted by the owner of an immoveable and registered before the registration of the owner's title, will rank prior to one given and registered since the registration of the owners title. *Dubeau & Piette*, 12. R. L. 92, S. C. 1883.

### XVII. PROOF OF CERTIFICATE.

Art. 2145a of the C. C., enacted by section 5 of the Act 47 Vict., cap. 13, is amended by adding thereto the following paragraph:

"The certificate of registration is *prima facie* proof of its contents. Q. 48 Vict., cap. 19, sec. 1."

Art. 2147 of the Civil Code enacted by section 6 of the Act. 47 Vict., Cap. 13, is amended by adding to the 1st paragraph thereof the following words, "and is *prima facie* proof of its contents." Sec. 2.

### XVIII. REGULARITY OF.

48. The opposants were collocated in the report of distribution for the balance of the price of sale as transferees. The plaintiff contested their rights because their deed, registered by memorial, was defectively registered. *Per curiam*.—The contestants, however, on the 19th August, 1874, before taking their hypothec on the property, themselves, caused the registration to be renewed. They must be held, therefore to have taken their hypothec with full knowledge of what they themselves had done; and in their mouths, at all events, whatever questions others might raise, the objection is not to be received. The point, in any case, would only be a technical one. The form used is the form given in the Code of Procedure (appendix No. 26), and under Art. 1172 C. C., it was in time. The object of all registration is notice. A registration by one is as good as by another. The judgment which dismissed the contestation is confirmed with costs. *Société de construction Jacques-Cartier & Lamarre*, 5 L. N. 218, S. C. R. 1882.

### XIX. RENEWAL OF.

49. If a person renews the registration of a hypothec after the delay allowed by law and

(1) The registration of a real right cannot prejudice the purchase of an immoveable, who at the time (and before the coming into force of this code), was in open and public possession of it as owner, even though his title be not registered until afterwards. 2084 CC.

after the property hypothecated has passed into the hands of others, by duly registered titles, such renewal of registration would be set aside, and the person affecting it, would be liable in damages towards the proprietor of the property. *Daigneault & Demers*, 12 R. L. 66, S. C. 1881.

50. Where the creditor had neglected, through the fault of the notary, to renew the registration of his hypothec, and the property was sold by the sheriff, so that the surety could not be subrogated, he was held to be discharged. *Vezina & Bernier*, 7 Q. L. R. 310, S. C. 1881.

51. The registration of a deed of sale in which the immoveable sold is described by its cadastral number, and in which the purchaser undertakes to pay the amount of a hypothec due registered before the proclamation of the Cadastre, will not supply the place of the renewal of registration of such hypothec required by C. C. 2172. *Les Ecclésiastiques du séminaire de St-Sulpice, & La Société de Construction Canadienne*, 28 L. C. J. 23 & 7 L. N. 131, Q. B., 1884.

#### REGISTRY OFFICES.

Art. 2160 of the C. C. is replaced by the following:—"2160. Registry offices must be kept open every day, Sundays and holidays excepted from nine o'clock in the morning till four o'clock in the afternoon."

2. This Act shall come into force on the day of its sanction. Q. 46 Vict. C. 23, Sec. 1.

#### I. LIABILITY OF COUNTY FOR CARE OF BUILDING.

52. The registrar of the County of St. John, brought action for \$925 for the heating, care and cleaning of the building for seventeen years, and for furniture provided for the same, under C. S. L. C., cap. 24, sec. 26, s. s. 5, which authorizes the Council to pass a by-law for the acquisition, construction, and maintenance of an office for the registration of deeds, and of a fire-proof vault. Plaintiff, however, had only recently discovered this provision and, according to his own admission, had no thought of making any claim on the Council, when he rendered the services, &c. Action dismissed. *Chartrand & Corporation of the County of St. John*, 6 L. N. 83, S. C. R. 1883.

### REINTEGRANDE.

#### I. ACTION EN, *see* ACTION.

### RELIGIOUS INSTITUTIONS.

#### 1. EXEMPTION FROM TAXATION.

53. Property for which appellants demanded taxes from the respondent, was a farm known by the name of "Maizerets," devoted for more than a century to the use of the priests, eccle-

siastics and pupils of the seminary of Quebec as a place of recreation. It was their country house, to which they resorted to the number of 300 and upwards, for the fresh air and exercise, every week.—*Held*, following *Verdon et Les dames de la Congrégation N.-D. de Montréal* (1), that the defendants were exempt from all municipal and school taxes on account of said property. *School Commissioners of St. Roch & Séminaire de Québec*, 10 Q. L. R. 335, Q. B., 1884.

### RENTES.

#### I. CONSTITUTED.

##### *Registration of.*

#### II. LIFE.

#### I. CONSTITUTED.

54. The 99th Art. of the *Coutume de Paris*, which is as follows: "*Les détenteurs et propriétaires d'héritages chargés et redevables de cens, rentes ou autres charges réelles et annuelles, sont tenus personnellement de payer et acquitter icelles charges à celui ou ceux à qui elles sont dues, et les arrérages échus de leurs biens, tant et si longuement que des dits héritages, ou de partie et portion d'iceux, ils seront détenteurs et propriétaires*," does not apply to the constituted rent. *Wright & Moreau*, 10 Q. L. R. 544, S. C. 1882, & 8 L. N. 371, Q. B., 1885.

55. *Registration of.*—The opposant, in 1856, sold a lot of land in Montreal, for £40, for the payment of which the purchaser agreed to an annual constituted rent of £2.8, and that in case of the alienation of the property, the capital of the rent would become exigible, unless the subsequent purchasers also agreed to pay the rent. It was further stipulated that in case of the inexecution of any of the conditions on the part of the purchaser or his assigns, that the opposant should recover possession. The property passed through several hands until it reached the hands of the defendant as assignee in insolvency of the last transferee. The opposant, on the forced sale of the property, claimed to be collocated for the full amount of the rent and two years arrears of interest. The contestant, who had a duly registered title against the property, contested the collocation of the opposant on the ground that she had never renewed the registration of her claim as required by law. The opposants replied that, as unpaid vendors, they had the right to demand the resolution of the sale and to re-enter into possession, and not having demanded this, they had still a right to be collocated by privilege on the proceeds according to Art. 729 of the Code of Procedure. *Held*, following *St. Cyr & Millette*, 3 Q. L. R. 369; *Shaw & Lefurgy*, 1 L. C. R. 5; *Bouchard & Blais*, 4 L. C. R. 371; *Thomas &*

(1) II Dig. 651-55.

*Aylen*, 16 L. C. J. 309; *Gauthier & Valois*, 18 L. C. J. 26, that the title of the opposants being anterior to the Code, the right to a dissolution of the sale was preserved, even without registration, and that not having asked for a dissolution, they had a right under Art. 720, to be collocated on the proceeds in preference to all hypothecary creditors. *La Compagnie de Prêt et Crédit Foncier & Grand*, 25 L. C. J. 101, S. C., 1880.

## II. LIFE.

56. The privilege of the Crown for arrears of life rents is like that of individuals restricted to five years and the current year. *Banque Nationale & Davidson*, 8 Q. L. R. 319, S. C., 1881.

57. The property, on which was a life rent was sold by the sheriff, and the owner of the rent having secured it by an opposition *à fin de charge*, which was allowed, transferred it to the plaintiff. The plaintiff signified the transfer to defendant and brought action, in default of payment, based on the transfer. Defendant pleaded that plaintiff's title was properly the judgment on the opposition and not the transfer, and this view was maintained by the Court of first instance, but in Review, reversed on the ground that the transfer constituted his proper title. *Wright & Moreau*, 5 L. N. 186, S. C. R., 1882, & 8 L. N. 371, Q. B., 1885.

## REPAIRS.

I. RIGHT OF LESSEE TO DAMAGES FOR LOSS OCCASIONED BY, *see* LESSOR & LESSEE, RIGHTS OF LESSEE.

## REPRISE D'INSTANCE.

I. MOTION FOR, *see* ATTORNEYS CHANGE OF.

## REQUÊTES—*See* PROCEDURE, PETITIONS.

## REQUÊTE CIVILE.

### I. GROUNDS FOR.

### II. PROCEDURE ON.

### I. GROUNDS FOR.

58. The defendants retained an attorney to defend their case upon the merits. The attorney so retained prepared an appearance which he believed he had filed, but owing to an omission as he supposed of his student or clerk, the register did not show that an appearance was ever received the prothonotary, and judgment was rendered by default.

*Held*, on affidavit of these facts by the attorney in question and on the authority of *Kellond & Reed*, (1) that the enumeration in Art. 505 of the Code of Procedure of cases in which *requête civile* might be granted was not exclusive and that the *requête* would be allowed. *Neil & Champoux*, 7 Q. L. R. 210 & 11 R. L. 143, S. C. R., 1881.

59. In a case in which the defendants appeared by attorney but did not plead, and were summoned to answer interrogatories but did not appear, and the interrogatories were taken by default.—*Held*, that an allegation supported by affidavit of defendants that they offered to answer interrogatories afterwards was not sufficient to set aside the judgment by *requête civile*. *Campbell & McGrail*, 4 L. N. 325, S. C., 1881.

60. And in another case in which the defendant urged that she had never been served, which appeared also by the return of the bailiff, who said she had a domicile here, and she had not been called in as an absentee.—*Held*, following *Thouin & Leblanc*, (1 Dig. 905-90), and *Kellond & Reed*, *Id.*, (692-86), that a *requête civile* was not the proper remedy, as it was only open to parties in the cause, and her proper recourse was by *tiers* opposition, and as this had also been filed, opposition maintained and *requête civile* dismissed. *Hall & Harrison*, 4 L. N. 325, C. C., 1881.

61. Where the Court had granted leave to defendant, after foreclosure, to file a plea, but the plea was not produced, and the plaintiff made his proof *ex parte* and obtained judgment.—*Held*, that the *requête civile* subsequently by defendant was properly dismissed, notwithstanding the affidavit of his counsel, alleging that there was an agreement between him and the plaintiff's attorney that the case should not be proceeded with. *Trudel & Strong*, 6 L. N. 316, S. C. R., 1883.

### II. PROCEDURE ON.

62. Plaintiff obtained judgment *ex parte* against defendant; and the latter after getting an order to suspend from a judge in chambers, filed his *requête civile* and gave notice. Plaintiff made motion to dismiss on the ground that the *requête* had not been presented *au même tribunal Cour tenante*. The plaintiff based his proceeding on 505 C. C. P. (1) and

(1) Judgments which are not susceptible of being appealed from or opposed, as hereinabove provided, may be revoked, upon a petition presented to the same Court, by any person who was a party to or was summoned to be a party to the suit in the following cases. 1o. Where fraud or artifice has been made use of by the opposite party. 2o. Where they have been rendered upon documents which have only been subsequently discovered to be false, or upon any unauthorized tender or consent disavowed after judgment. 3o. Where, since they were rendered, documents of a conclusive nature have been discovered which had been withheld or concealed by the opposite party. 505 C. C. P.

the defendant on 507 C. C. P. (2).—*Held* dismissing the motion of plaintiff that the procedure was sufficient and the Court would not revise the order of the judge *in banco*. *Landreville & Lenoir*, 26 L. C. J. 287, C. C., 1882.

## RESERVED CASE—*See* CRIMINAL LAW.

## RESILIATION.

I. DE VENTE DES MEUBLES *see* SALE OF MOVABLES.

## RES JUDICATA—*See* CHOSE JUGÉE.

## RESOLUTIONS.

I. OF MUNICIPAL COUNCIL *see* MUNICIPAL CORPORATIONS.

## RETROACTIVITY.

I. OF STATUTES *see* SUCCESSIONS.

## RETROCESSION.

I. WHAT IS.

63. Where father and son, sold a property belonging to them in equal portions, to the brother of the father, who some years subsequently resold it to his brother.—*Held* that this was not a retrocession and did not create confusion of the qualities of debtor and creditor with regard to the balance of the price of the first sale which had been delegated. *Dostaler & Dupont*, 8 Q. L. R. 365, S. C. R. 1882.

## RETURN.

I. OF SERVICE *see* PROCEDURE SERVICE.

## RETURNING OFFICER—*See* ELECTION LAW.

(2) Petitions for revocation of judgment cannot stay or prevent execution unless an order to suspend is granted by the Court or judge. 507 C. C. P.

## REVENDEICATION.

I. ATTACHMENT BY *see* ATTACHMENT.

## REVIEW.

- I. COSTS IN.
- II. DELAYS IN.
- III. DEPOSIT IN.
- IV. FACTUM IN.
- V. IN MUNICIPAL MATTERS.
- VI. INSCRIPTION STRUCK BY ERROR MAY BE REPLACED.
- VII. PARTIES NOT IN THE RECORD CANNOT INSCRIBE.
- VIII. PROCEDURE IN.
- IX. QUESTION OF COSTS IN.
- X. RIGHT OF.

I. COSTS IN.

64. Where a party inscribing in review, files a desistement from inscription after appearance and factum has been filed by the respondent, and after the inscription on the rôle for hearing, the respondent is entitled to full fees as in a case settled before hearing. *Milloy & O'Brien*, 27 L. C. J. 289, S. C. 1880, & 6 L. N. 336, S. C. R. 1883.

II. DELAYS IN.

65. If the eighth day after judgment is a non-judicial day, the deposit for revision may be made on the ninth day, and in such case an inscription filed on the tenth day is good. *Hingston & Larue*, 7 Q. L. R. 306, S. C. R., 1881.

66. Where there is an inscription in Review of a judgment rendered in a suit between lessor and lessee, the opposite party is entitled, under the C. C. P. 500, to a delay of eight days from date of inscription, before he can be compelled to argue the case. *Penny & The Montreal Herald Printing & Publishing Company*, 6 L. N. 68, S. C. R., 1883.

III. DEPOSIT IN.

Art. 497 of the said Code is repealed and replaced by the following :

"497. This review cannot be obtained, until the party demanding it has deposited, in the office of the Prothonotary of the Court, which rendered the judgment, and within eight days from such judgment a sum of twenty dollars, if the amount of the suit does not exceed four hundred dollars or of forty dollars if the review is taken in virtue of paragraph 4 of article 494, or if it be a real action ; together with an additional sum of three dollars for making up and transmitting the record, when the judgment has been rendered elsewhere than in the cities of Quebec and Montreal. The amount thus deposited is intended to pay the costs of the review incurred by the opposite party, if the court should grant them, if not, it is returned to the party by whom it was deposited." Q. 48 Vict., Cap. 21.

67. Where a plaintiff inscribed in review, on two contestations, but made only one de-

posit and the defendant moved to discharge the inscription in consequence.—*Held* that the plaintiff would be allowed to make another deposit on payment of costs and motion, but the inscription would stand. *McNamee & Jones*, 4 L. N. 102, S. C. R. 1881.

68. On an inscription in review, *held* following *Lacombe & Ste-Marie*, *Leavitt & Moss & Jones & McNamee*, that when several defendants have pleaded separately, the plaintiff inscribing in revision on all these contestations must make as many deposits as there are contestations. *Pednaud & Perron*, 7 Q. L. R. 319, S. C. R., 1881.

69. On an inscription in Review from a judgment granting a writ of possession, it was contended that the deposit should be \$40, instead of \$20.00 as the proceeding concerned real estate. *Held* that as the tariff only gave a small fee on writs of possession, not as in a principal action, that the deposit of \$20.00 was sufficient. *McLellan & Hale*, 4 L. N. 351, S. C. R., 1881.

70. To a seizure of the right of use and habitation, reserved by defendant in the sale of his property, the defendant filed opposition *afin d'annuler* on the ground that the rights in question which he bound himself not to dispose of without the consent in writing of the proprietor of the land, were *insaisissable*. *Held* that such rights were real rights and to inscribe in Review from a judgment dismissing such opposition, a deposit of \$40, was necessary. *Goulet & Gagnon*, 8 Q. L. R. 208, S. C. R., 1882.

#### IV. FACTUMS IN.

71. Le *factum* en révision une fois produit forme partie du dossier, et, par conséquent, devient un document public dont les parties peuvent prendre communication comme de toute autre pièce de procédure. Le *factum* ne doit contenir rien de secret, ce n'est qu'un récit des faits et l'argument des parties. *Lighthall & Chrétien*, 5 L. N. 363, S. C. R., 1882.

#### V. IN MUNICIPAL MATTERS.

72. *Held*, following *Fiset & Fournier*, (1) that no review can be had of a judgment of the Circuit Court respecting a municipal office. *Theroux & Corporation of Arthabaskaville*, 9 Q. L. R. 62, S. C. R., 1883, & *Lacerte & Dufresne*, 9 Q. L. R. 190, S. C. R., 1883.

Whereas it is unjust to deprive parties of the right of review, before three judges of the Superior Court, in certain cases in which the rights of Municipal Corporations and of the persons under their administration are in question. Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. The following paragraph is added to the five paragraphs of Art. 494 of the Code of Civil Procedure of Lower Canada.

(1) II Dig. 957-84.

"6. From all judgments concerning municipal corporations and municipal offices, on proceedings taken in virtue of Chap. 10 of this Code."

2. The following words : "If the review is taken in virtue of paragraph 6 of article 494," as inserted in article 497, in the seventh line of the said article, after the word "dollars" and before the word "or", so as to amend the articles as follows :

"This review cannot be obtained until the party demanding it has deposited in the office of the prothonotary of the Court which rendered the judgment, and within eight days from the date of such judgment, a sum of twenty dollars, if the amount of the suit does not exceed four hundred dollars, or of forty dollars if the amount of the sum exceeds four hundred dollars, if the review is taken in virtue of paragraph 6 of article 494, or if it be a real action; together with an additional sum of three dollars for making up and transmitting the record, when the judgment has been rendered elsewhere than in the Cities of Quebec and Montreal. The sum thus deposited is intended to pay the costs of the review incurred by the opposite party, if the Court should grant them, if not, it is returned to the party by whom it was deposited.

3. The following article is added to article 500 of the said Code.

"500a Cases pleaded in virtue of paragraph 6 of article 494 shall have precedence over others." Q. 45 Vict., Chap. 33.

The following paragraph is added to article 494 of the Code of Civil Procedure of Lower Canada, as replaced by the Act 34 Vict., Cap. 4.

"From all judgments in matters concerning municipal offices, on proceedings taken in virtue of Chapter ten, of title second of book second, of the second part of this Code." Q. 48 Vict., Cap. 21, Sec. 1.

#### VI. INSCRIPTION STRUCK BY ERROR MAY BE REPLACED.

73. Where an inscription in Review was discharged by error, it was, on motion, replaced, there being no counter affidavit to that by which the motion was supported. The Court, however, remarked that the more correct course was by *requête* civil and not by motion. *Watson & Smith*, 4 L. N. 402, S. C. R., 1881.

#### VII. PARTIES NOT IN THE RECORD CANNOT INSCRIBE.

74. A bailiff who by the judgment complained of was suspended in consequence of his testimony as a witness in the cause, is not a party to the cause in which he was examined. *Held* that the Court of Review could not, on an inscription by him, inquire into the legality of such suspension. *Hurtubise & Riendeau*, 4 L. N. 354, S. C. R., 1881.

#### IX. QUESTION OF COSTS IN.

75. The Court of Review will reform a judgment of the Court below which condemns the defendant to pay plaintiff's costs of *enquête* on a demand of plaintiff for damages which was overruled by the Court. *McLeod & Marcil*, 6 L. N. 55, S. C. R., 1883.

## IX. PROCEDURE IN.

The following Art. is added after Art. 500 of the said Code :—500. "Cases instituted in virtue of paragraph 4 of Art. 494 (1) have precedence over all other cases. Q. 48 Vict., Cap. 21, Sec. 3.

## X. RIGHT OF.

76. A judgment on a petition to be appointed judicial guardian, is not susceptible of revision. *Gagnon & Lalonde*, 4 L. N. 277, S. C. R. 1881.

77. On a motion to strike an inscription in review, on the ground that the amount was not sufficient to give jurisdiction, the demand being for \$96, and the possession of the property valued at \$8 per month.—*Held* sufficient, especially on an inscription by a defendant *en garantie* who could have a right, even to add the costs on the principal demand to which he was condemned. *Gauthier & Desy*, 9 Q. L. R. 13, S. C. R. 1882.

78. A judgment in Chambers, appointing a sequestrator, is in the nature of a final judgment, and a review may be had upon such judgment. *McCracken & Logue*, 6 L. N. 90, S. C. 1883.

## REWARD.

## I. RIGHT TO.

79. The defendant offered a reward for information that would secure the conviction of the person who broke into his shop on the night of the 17th May, and stole goods therefrom. The plaintiff gave information that his own nephew was the thief, and the latter was convicted on his own confession of larceny, as on 15th May.—*Held*, that the plaintiff was entitled to the reward, notwithstanding that the conviction was for larceny and not for breaking into a shop and stealing therefrom, and that the date was different from that mentioned in the offer of reward—more especially in the absence of proof that there were two offenses committed about that time, at the same place, or the person convicted was only a receiver. *Williams & Nicholas*, 7 L. N. 75, S. C. R. 1883.

## RIGHT OF ACTION See — ACTION INTEREST IN.

## RIGHT OF WAY—See SERVITUDES.

(1) Upon every interlocutory judgment which unnecessarily retards the final hearing or decision of the case. C. C. P. 494, par. 4.

## RIPARIAN PROPRIETORS.

## I. RIGHTS OF.

80. Case of Bell & Corporation of Quebec (II Dig. 660-94), reported *in extenso*, 7 Q. L. R. 103, P. C. 1879.

## RIVERS.

## I. RIGHTS OVER.

81. The limits of the municipality of the town of Longueuil extend to the center of the River St. Lawrence, and a wharf situated within the said limits, used as the property of a Ferry Co., is liable to taxation by the municipality. *Ville de Longueuil & La Cie. de Navigation de Longueuil*, 6 L. N. 291, S. C. 1883.

## RIVER ST. LAWRENCE.

I. ACT FOR FACILITATING THE NAVIGATION OF NEAR THE HARBOUR OF QUEBEC, *see* C. 48-49 VICT., CAP. 77.

II. DEEPENING OF CHANNEL, *see* C. 46 VICT., CAP. 38.

III. IMPROVEMENT OF, *see* C. 45 VICT., CAP. 44.

## ROADS—See MUNICIPAL CORPORATIONS.

## I. RIGHTS OVER.

II. WIDTH OF, *see* TUNPIKE ROADS.

## I. RIGHTS OVER.

82. Where the appellants had made a road for the purpose of access to their mills, and had bridged it with logs, which logs they afterwards removed to use on another road.—*Held* that the removal of the logs did not give to the Corporation a right to the possessory action, and the judgment of the Superior Court, maintaining a demand to that effect, was reversed. *Price & Corporation of Ste. Genevieve*, 8 Q. L. R. 67, Q. B. 1881.

## ROMAN CATHOLIC CORPORATIONS.

I. ACT RESPECTING, *see* Q. 46 VICT., CAP. 44.

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## I. ACCEPTANCE OF GOODS.

1. Action in assumpsit for the price of a barrel of wine amounting to \$110. *Plea non debitatus.* Proof was that defendant had acknowledged to a third party that he had purchased the wine and offered to sell him half of it. *Held,* to be good evidence of acceptance, and acceptance can be proved by parole. *Lemonier & Charlebois*, 5 L. N. 196, S. C., 1882.

2. And so where the plaintiffs set up a sale of oil in barrels to arrive and that in accordance with the contract appellants shipped 778 casks of oil which arrived in Montreal, 1st July 1880; that notice was given to respondents of its arrival and that L. & M. agents of appellants, were instructed by respondents through their agent to store the same as it was not then required; that shortly after arrival and storage of the oil, respondents by their manager ordered appellants agents to sell the oil at 60 cents per gal.; that five barrels were sold at this rate, and that respondents then advanced the price; that they finally refuse to take the oil altogether and, upon such refusal, the oil was sold at the current market price and a loss of \$3094.71 made, for which action was brought. All these transactions were verbal and no writing could be produced as a commencement of proof.—*Held,* in Supreme Court, overruling all the decisions in the Courts below, that parole evidence of such acceptance was admissible under Art. 1235 C. C. *Munn & Berger*, 4 L. N. 218 & 6 L. N. 363 & 27

L. C. J. 349 Q. B, 1883 & 10 S. C. Rep. 512, Su. Ct. 1884.

## II. BILL OF.

3. The plaintiff, in November, 1882, lent to G. L. & Co. \$10,425.27, on the security of a bill of sale, of goods belonging to G. L. & Co. and which at the time where in a particular wareroom of which G. L. & Co. had one key, and the customs another. At the bottom of the bill of sale, it was expressed as follows: "We hold the within mentioned goods in hand, and duty paid to the order of Messrs. Ross & Co. for advances made by them, Quebec 8th. Nov. 1882, and signed G. L. & Co." G. L. & Co. subsequently became insolvent and assigned, and on action by plaintiff for possession of the goods.—*Held*, that the bill of sale was worthless and conferred no privilege. *Ross & Thompson*, 9 Q. L. R. 365, S. C. 1883.

4. But, *held* in review reversing this judgment, that the bill was a valid pledge, and conferred a privilege. 10 Q. L. R. 308, S. C. R. 1884.

## III. BY TENDER.

5. Action of damages, the plaintiffs claiming over a thousand dollars in consequence of the refusal of the defendants to take some lumber from them. It appeared that the plaintiffs are lumber merchants at Montreal, and the defendants were the contractors for the construction of a cotton factory at Valley-field. The plaintiffs made a tender, which was accepted, for the supply of the lumber needed for the building. The pretension of the plaintiffs was that the defendants had not obtained all the lumber from them (plaintiffs), but had purchased elsewhere. The damages claimed represented the profit which the plaintiffs pretended they would have made on the lumber which had not been obtained from them. The answer to the action was a denial that the defendants were bound to take the quantities mentioned in the tenders; these quantities were only an approximation, and the tenders did not make a final contract. The plans had been changed during the erection of the factory. The evidence was very long but the Court had no hesitation in saying at once that if the plaintiffs were entitled to anything at all, it would be something extremely small. For while lumber to the value of \$37,000 had been obtained from plaintiffs, only the insignificant quantity of less than \$400 worth had been purchased elsewhere. The tender did not bind the defendants to take all the lumber from plaintiffs, and the verbal evidence was insufficient. The Court could not but regard the action as vexatious and uncalled for, and it must be dismissed with costs. (1) *Hurteau & Lawrence*, S. C. 1882.

(1) In Appeal.

## IV. DELIVERY OF.

6. A delay of three months does not come within the meaning of "goods to arrive shortly." The action was by the vendor for specific performance of a sale of iron pipe. The sale was made through a broker, on the 2nd February, 1880. A portion of the pipe was at the time in store and deliverable from there. The balance was to arrive *shortly* and to be delivered by the Grand Trunk Railway. On the 11th May, following, a part of this balance, on board the steamer *Polynesian*, was tendered, and refused as too late. The market price of the iron, had in the meantime fallen considerably. Plaintiff pretended that so long as they were not required to deliver, they were in time to deliver. *Per Curiam* (quoting Benjamin on Sales 481.) Here, giving a fair consideration to the language of the contract and the circumstances of the case, we find that the iron was to arrive shortly, and to be delivered by the Railway. It was in the winter season, and if the time of delivery were extended into the summer, the delivery would be by a steamship, in all probability, though there is imperfect evidence on this head. A part from this consideration ".... I do not consider any offer after three months, of goods to arrive shortly, an offer made within a reasonable time. *Thompson & Currie*, 4 L. N. 139, S. C. 1881.

7. The defendant purchased a quantity of hay from the plaintiffs, amounting to \$2200, under a written agreement to pay cash for it, inside of eight days. The hay to remain some time in the possession of the seller, and to be taken as it was, without reweighing. Defendant failed to pay for it, according to the terms of the agreement, and the plaintiffs brought action and dissolved the sale. *Held*, that in a sale of hay, by weight, by number or measure, the purchaser is bound to pay, according to the agreement, although the sale be not perfected according to the provisions of Article 1374 C. C. (1) *Riopelle & Fleury*, 12 R. L. 303, S. C., 1883.

8. A manufacturer of agricultural instruments, in the absence of any agreement to the contrary, is bound to deliver the instruments in good working order and where he had not done so, but had delivered the instrument in bad order just when the purchaser required to use it.—*Held* that he was justified in buying another and resisting payment of the one so delivered. *McCormick & Neville*, 12 R. L. 617, S. C. 1884.

## V. DISSOLUTION OF.

9. An unpaid vendor has the right to dis-

(1) The wife, who, during the community, binds herself for or together with her husband, even jointly and severally, is held to have done so, only in her quality of common as to property; if she accept she is personally bound for her half only of the debt thus contracted, and she is not at all liable if she renounce. 1374 C. C.

solve the sale for a part of the price, either by demanding the dissolution of the sale as a whole, returning the part prepaid, or demanding the dissolution of a sale of a part if the things sold are by nature divisible, and has a right to a conservatory seizure until the question of dissolution is decided. *Lemire & Bourdeau*, 12 R. L. 362, S. C. 1880.

10. The right to a dissolution of a sale under Art. 1544 C. C. (1) is established in favor of the seller only, who may revendicate a part of the good sold, and sue the purchaser for payment of the balance. *Riopelle & Henry*, 12 R. L. 303, S. C., 1883.

11. Action par les demandeurs alléguant que le 13 juillet dernier, ils ont vendu au défendeur, pour un prix total de \$4808.02, diverses marchandises qu'ils énumérèrent; que, le 11 septembre suivant, il s'est reconnu en déconfiture et qu'il est insolvable, et que toutes ces marchandises, à l'exception de cinq sacs de poivre noir et d'une barrique de vin d'Oporto, sont encore en la possession de l'acheteur, entières, intactes et dans les mêmes enveloppes que lors de la vente; que le défendeur leur a consenti un billet à six mois, qu'ils offrent de lui remettre et qu'ils ont déposé pour cet objet, et ils concluent à ce que la vente soit résolue et à ce que le défendeur soit condamné à leur remettre les marchandises, et à payer le prix susdit, si cette remise est impossible. Que la faillite de l'acheteur ne fait pas obstacle à la résolution, faute de paiement, de la vente à terme, et que le règlement du prix de marchandise, par lettre de change ou billet promissoire, n'est pas un paiement, ni, sans circonstances extraordinaires, une novation de la dette, et n'empêche pas la résolution de la vente à faire faute de paiement, mais que le vendeur doit, pour l'obtenir, remettre les meilleurs reçus. *Greenshields & Dubeau*, 9 Q. L. R. 353, S. C., 1883.

12. Le droit à la résolution de la vente, faute de paiement au terme, est distinct de la revendication, dans la huitaine, des meubles vendus sans terme, et que la première subsiste après l'expiration du délai fatal à la seconde. Que le créancier, qui a un privilège sur des meubles, peut l'assurer par une saisie conservatoire. *Wise & Murphy*, 9 Q. L. R. 327, S. C., 1883.

13. The action was to annul a sale of six bales of carpets, in default of payment by the vendors. The action was accompanied by a conservatory seizure. The Molson's Bank

(1) In the sale of moveable things, the buyer is obliged to take them away at the time and place at which they are deliverable. (If the price have not been paid, the dissolution of the sale takes place, in favor of the seller, of right and without the intention of a suit, after the expiration of the delay agreed upon for taking them away, or if there be no such agreement, after the buyer has been put in default in the manner provided in the title OF OBLIGATIONS;) without prejudice to the seller's claim for damages. 1544 C. C.

intervened and claimed that the demand should be dismissed as coming long after the sale and delivery. *Held*, following *Greenshields v. Dubeau*, gave judgments for the plaintiffs. *Hughes & Cassils*, 7 L. N. 367, S. C., 1884.

14. The fact that the buyer gave a note for the price of goods, which note was discounted at a bank by the seller, does not affect the right of the latter, to dissolve the sale when the note is not paid at maturity. *Rea & Kerr*, 7 L. N. 157, S. C., 1884.

#### V. ERROR IN PRICE OF.

15. The plaintiff purchased from the defendant ten boxes of matches at the rate of \$2.55 per box, forming a total of \$25.50, which he had paid and got a receipt for. Some hours afterwards the plaintiff called for the matches, but the defendant refused to deliver them, alleging that he made a mistake in the price, which should have been \$4.25 a box. The plaintiff took action in revendication.—*Held* that such an error is not a case of nullity in a sale, and that the defendant was bound to deliver the goods sold. *Morriset & Brochu*, 10 Q. L. R. 104, C. C. 1883.

#### VII. EVICTION.

16. Question whether the purchaser of real estate is bound to pay interest on his purchase money, when the property is mortgaged for a larger sum than the price due.—*Held*, following *Hogan & Bernier* (1) and *Parker & Felton*, that in a suit by a vendor of real property, for the recovery of the interest, merely on the purchase money, it is not competent to the defendant to claim the right to retain such interest, until security be given that he will not be disturbed in his possession of the property, by reason of certain undischarged hypothecs, registered against the property exceeding in amount the whole capital of the purchase money. *Grand Trunk R'y Co. & Currie*, and *Grand Trunk R'y Co. & Hall*, 25 L. C. J. 22, S. C. 1881. 1535 C. C. (2).

17. Action en déclaration d'hypothèque to recover \$251, with interest and costs, amounting to the further sum of \$36. Defendant pleaded that over and above these sums, there was an encumbrance on the property of \$492, and that he had just reason to fear trouble by an hypothecary action on account of it. He offered the interest due from 1st January, until the institution of the action,

(1) 11 Dig. 670.

(2) If the buyer be disturbed in his possession, or have just cause to fear that he will be disturbed by any action, hypothecary or in revendication, he may delay the payment of the price until the seller causes such disturbance to cease or gives security, unless there is a stipulation to the contrary. 1535 C. C.

and asked that the action be dismissed as to any further sum, unless plaintiff should remove the said hypothec or give security. On proof plea maintained and plaintiff ordered to give security. *Rheume & Bouchard*, 4 L. N. 55, S. C. 1881.

18. Action for \$3,582.87, amount of instalment and accrued interest due February 15th, 1876, under a deed of sale of real estate from the *auteurs* of respondent to appellant. The price was sixty cents per foot, and the purchase money amounted to \$20,182.20, payable in instalments, but objected to pay the third. The defense was that by the deed of sale the vendors had sold the property in question, free and clear from all incumbrances whatsoever, save and except a vendor's privilege for \$5,250, in favor of the heirs McKenzie, which the vendors undertook to pay and have a discharge duly registered; that the purchase money was only payable subject to the fulfilment by the vendors of their covenant to remove the incumbrance, and that they had failed to do so. By another plea the defendant alleged that he had suffered damage to the extent of over \$4,000, by not being able to carry out a sale which he had made at an advance of 35 cents per foot, and that the instalment sued for was compensated by the larger amount of damage.—*Held*, in appeal, reversing the judgment of the Court below, that the clause of warranty being equivalent to a stipulation of *franc et quitte*, satisfaction thereof was a condition precedent to the institution of an action for the purchase money, or any portion thereof, or for arrears of interest. *Law & Frothingham*, 25 L. C. J. 172, & 1 Q. B. R. 252, & 4 L. N. 67, Q. B. 1881.

19. But *held* that the purchaser, in order to be in a position to claim damages for non satisfaction of the clause of *franc et quitte*, should put the vendor *en demeure* to remove the incumbrance and allow a reasonable delay for doing so. *Ib.*

20. The purchaser of an immoveable when sued for the recovery of arrears of interest on the purchase money cannot call in question the title of the vendor or defer the payment of any part of the purchase money, without showing that he is troubled or that he has just reason to fear being troubled by an action in revendication on the part of the real owner. *Bird & Desjardins*, 11 R. L. 468, S. C., 1882.

21. That when a purchaser of an immoveable has reason to fear eviction in respect of a claim exceeding in amount the balance due by him to the vendor in capital and interest, and he offers before suit by the vendor to pay him such balance, provided he give the purchaser security against the apprehended eviction, and after suit deposits said balance with his plea, the action of the vendor should not be dismissed purely and simply, but he should be ordered to furnish the security asked, within a delay to be fixed by the Court, and that in default of his giving such security within the delay, his action be dismissed,

and that the vendor should under the circumstances, pay all costs. *Cannon & Stewart*, 27 L. C. J. 358, S. C. R., 1883.

22. The purchaser of real estate who is not evicted and disturbed in his possession, has no right to obtain the realisation of the sale by reason of certain undischarged hypotheses registered against the property (far exceeding in amount the complete capital of the purchase) and which was not declared to him in the deed, unless the vendor sold with a stipulation of *franc et quitte*. *Grand Trunk Railway Company & Brewster*, 6 L. N. 34, Q. B. 1883.

#### VIII. FOR TAXES.

23. La vente d'immeubles, faite sous l'autorité du code municipal, pour le paiement des taxes sera déclarée nulle, 1o. Si au moment de la vente le propriétaire était en faillite et ses biens remis entre les mains d'un syndic; 2o. Si au moment de la vente un co-propriétaire avait pris des procédés en licitation pour arriver à la vente et au partage des dits immeubles. *Armstrong & et La Société de Construction Métropolitaine*, 7 L. N. 51, S. C. 1883.

#### IX. IN FRAUD OF CREDITORS.

24. Question as to the validity of a purchase of defendant's lands by opposant. Plaintiff obtained judgment against defendant on the 16th February, 1880, for \$62.40 with interest and costs, and an execution issued under which the lands in question were seized. Opposant claimed the lands under a sale to him by defendant on the 16th January 1880, duly registered. Plaintiff contested the opposition alleging fraud and collusion between opposant and defendant to defraud the creditors and that defendant was at the date of the sale insolvent to the knowledge of opposant and of the public. Opposant answered the contestation by saying that his title could not be attacked indirectly but only by putting the defendant into the cause. *Per curiam*.—This question has already been discussed in the case of *Kane & Racine* (1) and the jurisprudence is there laid down. By the evidence opposant knew all the creditors and must have known of the insolvency. On the whole the conclusion is that the deed should be set aside as made in fraud of the creditors. *Marcoux & Ranger*, 4 L. N. 164, S. C., 1881.

25. Judgment noted at II. Dig. 671-22, was confirmed in appeal. *Paige & Evans*, 4 L. N. 130, Q. B., 1881.

26. An action will lie to set aside the sale or transfer of property at the suit of the creditors, notwithstanding the sale has never been registered. *Ethier & Paquette*, 12 R. L., 184, S. C., 1884.

## X. JUDICIAL.

27. The appellant W. McD. D. having purchased a property in the City of Three Rivers, which proved to be burdened with mortgages, the property was sold, in a case, number 47, of the Superior Court, at the demand of one of the hypothecary creditors, Dame H. S., on one C. F., appointed curator to the *dé-laissement* of the said D. The claims against the estate (*oppositions afin de conserver*), largely exceeded the amount of the sheriff's sale. Among these claims (*oppositions*) was one by the purchaser D. and the sheriff Ogden, took from him, the said purchaser, a small payment in cash, and an obligation for the balance dated the 11th March, 1862, and secured on the property itself. After the death of the sheriff, his heirs sued the appellant, D. claiming from him, the amount of the above mentioned obligation of the 11th March, 1862. On the 10th June, 1874, the appellant D. was condemned to pay the amount of the obligation to the heirs of the sheriff as a part of his personal estate. On the 3rd March, 1875, the Court of Queen's Bench, sitting in appeal, confirmed the above mentioned judgment. *Held* that an obligation consented by an adjudicataire to a sheriff personally, for the price of an immoveable property, in lieu of a security bond as required by law, is null and void, and was set aside upon a petition in revocation. *Dawson & Ogden*, 10 Q. L. R. 70, S. C., 1883.

28. *Action to annul*.—A purchaser of an immoveable, at a sheriff's sale, cannot compel the creditor to refund him the purchase money on the ground that he is exposed to eviction. *Trust and Loan Company & Quintal*, 2 Q. B. R. 190, Q. B. 1882.

29. *Attacked on the ground of fraud*.—The daughter of defendant filed opposition to the sale of the things seized based on a previous judicial sale of the same things at which she was adjudicataire. Plaintiff contested on the ground that the first judicial sale was simulated and fraudulent, and the opposition was dismissed. In review the opposant urged that the bailiff's minute of sale was conclusive and could only be attacked by an *inscription en faux* or at least by special conclusions to annul. *Held* that such conclusions were necessary only where the title invoked had a legal existence and not where it was simulated and fraudulent as in the case in question. *Hingston & Larue*, 7 Q. L. R. 301, S. C. R., 1881.

30. *Deposit at*.—The defendant's property moveable and immoveable, was seized in execution of a judgment for about \$129, including costs. On the 9th December following, another writ, also against moveables and immoveables, was placed in the sheriff's hands in execution of a judgment for \$2,048, including costs. The moveables were sold and realized within \$2.60 of the whole amount due the plaintiff. The sheriff, however, in conformity with articles 642 and 643 of the Code of Pro-

cedure, continued his proceedings against the immoveables, and on the 7th April, these were sold to two different persons whom the defendant had procured to buy in the property for him but neither of whom ever paid the price of his adjudication. On the 5th June the Court granted two motions of the plaintiff asking orders for the resale of the property for false bidding. "*suivant l'usage et la pratique de cette Cour*," and therefore two writs of *venditioni exponas* were issued on the 25th June, 1879, ordering the sheriff to proceed according to law, to the resale of the property at the *folle enchère* of the parties. Subsequently to the issuing of these writs, the plaintiff obtained without previous notice to defendant, a judgment ordering the sheriff to exact from the bidders at the resale the deposit of a sum of money equal to the amount of costs due to the seizing party upon the judgment and seizure. No mention was made in the writs of *venditioni exponas*, nor in the conditions of sale which accompanied the sheriff's return of the condition that bidders would be required to make a deposit before their bids would be received. A few persons were told by the bailiff who made the announcements at the church door that a deposit would be probably be required but no public notice was given to that effect nor was there any notice whatever given to any one of the amount of the deposit that would be required. At the sale a deposit of \$200 was required in the case of one property and of \$150, in the other. On a petition by defendant to vacate the sales.—*Held*, maintaining the petition *en nullité*, that the order for a deposit should have been published as one of the conditions of sale. *Robitaille & Drollet*, 7 Q. L. R. 67, S. C. R., 1881.

31. *Description of property*.—Opposition to the sale of an immoveable, on the ground that the *procès verbal* of seizure did not describe properly the lots seized.—*Held*, maintaining the opposition, that in the absence of an official number, mention must be made of the coterminous lands in terms of Art. 638 of the Code of Civil Procedure, and that the omission so to mention the coterminous lands, renders the seizure of the immoveable null and void. *Comfort & Roy*, 25 L. C. J. 222, S. C. R. 1880.

32. The defendant, by an opposition *afin d'annuler*, opposed the seizure, on the ground that the description of the thing seized was insufficient.—*Held* that the description of the immoveable seized, given in the minutes of the seizure and in the advertisements, should be precise in itself as to what is seized, and it is not sufficient to refer therein to a title deed, and to state that all the right and interest of the defendant, in and upon the property under such deed is seized. *Carter & Molson*, 6 L. N. 134, & 27 L. C. J. 151, S. C. 1883.

33. *Effect of*.—The judicial sale of an immoveable dissolves a lease of the property so sold, and the adjudicataire is entitled to a

writ of possession on summary petition to expel the lessee. *McLaren & Kirkwood*, and *Brooke & Blackman*, 25 L. C. J. 107, and *Desjardins & Gravel*, 25 L. C. J. 105, S. C. 1881.

34. *Error in advertisement*.—In an advertisement published in a newspaper, of a sale of moveables, the number of the house where the sale was to take place was given incorrectly.—*Held* that an error in the advertisement of sale of moveables seized, giving a wrong number to the place of sale, does not annul the seizure, but merely makes it necessary to give other and correct notices of sale. *Dorton & Diette*, 7 L. N. 266, S. C. 1884.

35. *Folle enchère*.—Where the adjudicataire has retained the purchase money under Art. 688 C.C.P., and has appealed from the judgment of distribution, and put in security, a resale for false bidding, cannot be demanded pending the appeal. *Lalonde & Prevost*, 4 L. N. 173, S. C. 1881.

36. The demand was for a *folle enchère* under Art. 690 C.C.P. It was made to a judge in Chambers.—*Held* that it ought to have been made, under C. S. L. C. cap. 8, sec. 18. *Delisle & Souche*, 4 L. N. 101, S. C. 1881.

37. In 1873 one R., the husband of the opposant, sold to the defendant and tiers opposant two lots of land for \$500, of which \$400 was paid in cash, and for the remaining \$100 the land was hypothecated in favor of the vendor. On the 6th June, 1877, the defendant and tiers opposant made a donation with warranty of said two lots, in favor of his son, and on the 6th December, of the same year, the said two lots were sold as belonging to the defendant who had ceased to own them just six months previously, and they were purchased by the son although they were his own property. The opposant then filed an opposition in her own right as having been *commune en biens* with her husband and as representing certain of his children, claiming \$81.22 being part of the balance due on the sale so made by her late husband. The son of the defendant being *adjudicataire* failed to pay his purchase money, and the opposant, on the tenth of September, 1879, obtained a judgment ordering him to pay into the hands of the prothonotary \$111.58, being, with costs and interest, the difference between the price at which the two lots had been adjudged to him, and the price which they brought when sold at his *folle enchère*. Thereupon the defendant filed a *tierce* opposition to the judgment of the 10th of September, so rendered, and after setting forth the facts mentioned, alleged that by an act *sous seing privé* of the 15th July, 1875, the husband of the opposant transferred the \$100 in question to one A. C. and promised to make a notarial transfer of the sum, whenever required, and that he, the tiers opposant, as the debtor of the said sum, accepted the transfer so made; and that the opposant consequently was without rights thereunder. The opposant demurred.—*Held*, maintaining the claim

of the opposant, that every one whose right is apparent on the face of the record, may demand that the *fol adjudicataire* be condemned to pay the difference of the *folle adjudication* and the final one, and the judgment to that effect could not be revoked by the *tierce* opposition. *Ross & Corrigan*, 7 Q. L. R. 91, S. C. 1881.

38. On a rule for *contrainte par corps* against a *fol adjudicataire* to compel payment of the loss occasioned by a resale of the property.—*Held* not necessary to describe the property, nor was personal service of the rule necessary, where the motion had been personally served. *Delisle & Souche*, 26 L. C. J. 162, S. C. R. 1881.

39. One of three joint adjudicataires who is also a creditor collocated, may demand the resale of the property at the *folle enchère* of the judicataire, in default of their paying their part of the purchase money. *McGreevy & Leduc*, 10 Q. L. R. 188, Q. B. 1884.

40. *Grounds of nullity in*.—The question was as to the validity of a sheriff's sale at which certain property was adjudged to the appellant. The appellant having refused to carry out the sale, the respondent petitioned to have the property resold at his *folle enchère*. T. contested the petition on the ground that the sale was void by reason of misdescription. In appeal, the Court said the property in question had been sold by the sheriff as being lot No. 26 on the *cadastre* of the Parish of Ste. Anne du Bout de l'Isle, comprising 75 acres. The present appellant became a *judicataire*. But instead of getting 75 acres he found that he could only get one-third. The appellant was deceived as to what he was buying. It was not a case of mere deficiency in quantity of a property with which the purchaser was acquainted, but there was misdescription, by which the purchaser was misled into acquiring a property which he would not have purchased, if he had been aware of the truth. The Sheriff's sale should, therefore, be vacated and set aside. The Court had already decided several cases in the same sense. Another question had been brought up,—whether the appellant could oppose the nullity of the sale on a contestation of a proceeding for a *folle enchère*, or whether he was bound to bring a special action. The Court was of opinion that either mode is admissible. Article 714 gives the direct action, and Art. 717 allows grounds of nullity to be set up by the purchaser when called to pay. Judgment reversed. *Tremblay & —*, Q. B. 1882.

41. *Interest on purchase money*.—The Sheriff cannot be compelled to exact interest from the purchaser of an immoveable who is a hypothecary creditor in respect of such immoveable, and who has given a bond in terms of Art. 688, (1) of the Code of Civil

(1) Nevertheless the plaintiff or any other creditor whose claim is mentioned in the certificate of hypo-

Procedure. *Cross & Gareau*, 25 L. C. J., 253, S. C. 1880.

42. *Nullities in*.—This was an action to set aside a sale made by the Sheriff of Montreal, upon a warrant of the Mayor of St. Henri, for taxes due on certain property there situate of which the defendant, W. H. was described in the proceedings as the known proprietor, and he was made defendant in the proceedings to recover taxes, as appeared by the Sheriff's deed. The property was seized by the Sheriff on the 19th May, 1880, and was sold to T. R. J. as the last and highest bidder, for \$341, on the 29th July, 1880, and a deed was subsequently executed on the 6th August, 1880. The plaintiffs sued to have this deed set aside as having been made *super non domino, et non possidente*, H. not having been the proprietor or in possession of the property, *animo domini*, for several years. Plaintiffs alleged that they were proprietors and in possession of the property by deed of sale, dated 13th June, 1878, duly registered 27th of the same month, for \$9,000 from F. the assignee of H.'s insolvent estate, he having become insolvent by deed of assignment to J. T. on the 28th of July, 1875, and which assignment was duly registered on the 8th of September, 1875, and the estate afterwards duly transferred to F. On proof, action maintained and sale set aside. *Consolidated Bank & Town of St. Henri*, 5 L. N. 231, S. C. 1882.

43. *Pétition en nullité*.—The property of the defendant was put up at sheriff's sale on the 22nd of September last, and the petitioner, the Molsons Bank, who was a creditor of the defendant for the sum of \$11,193.33, alleged that it had authorized E., its manager, to attend the sale and bid upon the said property; that E. was present at the sale representing the petitioner, and that \$10,000 having been bid, he bid \$10,500, which was the highest and last bid, and the sheriff's officer should have adjudged the said property to him as the last and highest bidder, but instead of doing so he adjudged it to one C., advocate, of Montreal, as being the highest and last bidder, for the same amount of \$10,500. It was alleged that E. gave his bid in a loud and intelligent voice, which was heard by a large number of persons present at the sale, and on making this bid he heard the sheriff's officer announce this same bid of \$10,500; that not having heard any other person make a similar bid, he believed, as he

had every reason to believe, and as several other persons present at the sale believed, that this announcement of the sheriff's officer was his bid; and when the property was adjudicated, E. was surprised to hear the name of C., on behalf of the adjudicataire, not having heard any bid for this amount by C, and no announcement of it having been made by the sheriff's officer. Thereupon E. claimed the bid of \$10,500 as his, and asked to be declared the adjudicataire of the property. This the sheriff's officer refused to do, and he also refused to put the property up again, but declared C. the highest and last bidder and put his name in the *procès-verbal* of sale. The Molsons Bank caused a protest to be served on the sheriff, setting out the facts and protesting against the illegal action of the sheriff and his officer. It was alleged that the property was worth \$25,000, and that at the date of the adjudication the defendant was notoriously insolvent, and if the said adjudication was maintained, the Molsons Bank and the other creditors of the defendant would suffer serious loss, and the petition concluded by asking that the adjudication be declared null, and that the petitioner be declared the adjudicataire of the said immoveable as being the highest and last bidder at the said sale, and that in case it were established that the said C. also made a bid for the sum of \$10,500, it be ordered that the property be again put up for sale. Adjudicataire answered this petition, first, by a law issue, whereby he asked for the rejection of this petition on the following grounds: Because no legal reason is shown to justify the nullity of the sale; because the said petition did not allege any fraud on the part of the adjudicataire or his agent and did not allege that the essential conditions and formalities required for the sale had not been observed and did not show that the petitioner's claim would have been paid if the property had been sold for a higher amount. The adjudicataire also answered, formally denying that Elliott had made the bid mentioned in the petition. *Per curiam*.—It is in evidence that the petitioner is a creditor of the defendant for the sum mentioned in the petition. It is also in evidence that E. gave his bid at the sale by the sheriff in a loud and clear tone for \$10,500, and that at the same time C. also bid \$10,500, that is the same amount as E.; that the deputy sheriff who superintended the sales and his son who received the bids did not hear E.'s bid, but heard C.'s and adjudged the property to him in consequence; that the names of the bidders were not mentioned as their bid were taken, but were written on a sheet of paper on the counter; that the said E. was ready to bid up the said property to \$17,000; that the defendant is and was notoriously insolvent and is absent from the province. The circumstances as established do not prove the falsity of the *procès-verbal* of the bids, as it is proved that the deputy sheriff and the officer receiv-

these hereinafter mentioned, or who has filed an opposition in the hands of the Sheriff, may, on becoming purchaser, retain the purchase money to the extent of his claim, until the judgment of distribution, provided he furnishes the Sheriff with good and sufficient sureties for all damages that might result to any party interested in the event of the non-payment of such sum as the Court (or judge) may order such purchaser to pay into the hands of the Sheriff. 638 C. C. P.

ing the bids had no knowledge of E's bid, and what they entered in the *procès-verbal* was, so far as they were concerned, true and correct. It is clear that there was a misunderstanding, and the fact that E's bid was made in good faith, and that the property was adjudged for a price below its value, are sufficient reasons to annul the said adjudication and to grant the petition asking that the sale be set aside. The Court, therefore, orders that the property referred to at Côte St. Antoine be again put up to sale by the sheriff and be sold anew, with the ordinary formalities, each party paying his own costs of the present contestation. *Bank of Montreal & Hodgson*, S. C., 1884.

44. The delay of service of a petition *en nullité de décret* is the same as of an ordinary summons as regulated by Art. 75 of the Code of Procedure. *Brown & Demers*, 7 L. N. 312, S. C., 1883.

45. *Possession*.—A petition asking an order to the sheriff to eject the defendant and to put the adjudicataire in possession of the property must be served on the defendant, with the delay usual in a writ of summons. *Francis & Cheney*, 12 R. L. 624, S. C., 1884.

46. *Rescission of*.—Case of *Moat & Moisan*, (II. Dig. 681-68) reported in *extenso*, 25 L. C. J. 218. Q. B., 1880.

47. Where an immovable, charged with an unexpired term of an emphyteutic lease is sold by the sheriff without mention of such charge in the minutes of seizure and such charge diminishes the value of the property by about one half, the purchaser who is prevented by notification and protest on the part of the lessee from obtaining possession during such unexpired term may obtain the vacation of the sheriff's sale under Art. 714, C. C. P. (1) *Cassil & Lemieux*, 25 L. C. J. 317, S. C., 1881.

48. "*Recourse when property has been sold which does not belong to the defendant*.—The plaintiff, by error, caused a lot to be seized and sold as belonging to the defendant which in fact he had disposed of long previously to another. *Held* that he could, on petition, have the sale declared null and the money returned to the purchaser. *Bigras & O'Brien*, 11 R. L. 376, S. C. 1882.

49. *Stopped by sickness*.—Where the sale of real estate under a *writ de terris* has not

(1) Sheriff's sales may be vacated: 1o. At the instance of the judgment debtor, or of any creditor or other interested person. If fraud or artifice was employed with the knowledge of the purchaser, to keep persons from bidding; if the essential conditions and formalities prescribed for the sale have not been observed, but the seizing party cannot vacate the sale for any want of formalities attributable to himself or his attorney. 2o. At the suit of the purchaser. If he is liable to eviction by reason of some customary dower, substitution or other right from which the property is not discharged by the sheriff's sale. If the immovable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference. 714 C. C. P.

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taken place in consequence of the sickness, on the day of sale, of the officer charged with the execution of the writ the plaintiff is not entitled to a *venditioni exponas* under Art. 664 of the Code of Procedure (1) so as to have the property sold after two advertisements. *Gosselin & Naulin*. 7 Q. L. R. 283, S. C., 1881

#### XI. LIABILITY OF PURCHASER.

50. The 21st November, 1872, the plaintiff sold to one C. an immoveable property which C. in turn sold to defendants, the 4th June, 1878. Action in declaration of hypothec against the defendants for \$5,250 with interest at eight per cent, which by the declaration was alleged to be the balance due by C. on the price of sale to him with interest, as established by a judgment against C., of date the 19th April, 1880. Defendants pleaded that all the price of sale had been paid to plaintiff since the 19th February, 1879. That prior to their purchase, viz. the 1st September, 1876, C. showed them a statement of accounts with plaintiff, which plaintiff had acknowledged to be correct and had signed, and which showed a balance due to plaintiff on the price of property of \$1,442 43, which had since been paid. That they had purchased in good faith, believing that the plaintiff had been fully paid and the property was clear. The plaintiff demurred to these pleas on the ground that the defendants not being sureties of C., and not being personally responsible for the debt, could not plead matters personal to C., nor attack the judgment which had been rendered against him. *Held*, that the purchasers were not the *ayants-cause* of C., except for matters prior to the sale, and that the judgment obtained against C., after the sale by him could not be set up against the defendants, and made no proof against them of the amount for which the property was hypothecated, and that the defendants in such case had a right to plead payments made by their vendor. *Dubuc & Kidston*, 7 Q. L. R. 43, S. C., 1881.

#### XII. OBTAINED BY FRAUD.

51 A sale obtained by fraud is null, and an action in rescission will lie not only against the person committing the fraud but against the third owners in good faith to whom Art. 2085 C. C. (2) does not apply. *Lighthall & Chrétien*, 11 R. L. 402, C. C., 1882.

(1) The writ of *venditioni exponas* orders the sheriff to proceed with the sale of the immovable or the rent under seizure after a publication in French and in English at the church door on third Sunday before the sale and two advertisements in Quebec Official Gazette, with the formalities prescribed by Art. 648. 663, C. C. P.

(2) The notice received or knowledge acquired of an unregistered right belonging to a third party and sub-



52. Where part of the price of immoveables purchased by defendant from plaintiff consisted of a number of shares really worthless but to which a fictitious value had been given in effecting the purchase by fraudulent means within the knowledge of the purchaser, the sale was set aside at the suit of the vendor. *Crowley & Chrétien*, 4 L. N. 171, S. C., 1881, & 5 L. N. 268, Q. B., 1882.

### XIII. OF GOODS UNDER SEIZURE.

53. Where the defendant after seizure of things sold them to a third person who was ignorant of a seizure held on a revendication by the guardian, that the case was similar to a sale of stolen things, and that the creditor seizing or the guardian had a right to revendicate them in the hands of the purchaser. *Francis & Costello*, 12 R. L. 300, C. C., 1882.

### XIV. IMMOVEABLES.

54. A sale of land made by an assignee on a person who was not in possession, *animo domini*, in the sense of Art. 632 C. C. P., (1) will be set aside on the demand of the real proprietor. *Shortis & Luckhoff*, 11 R. L. 537, Q. B., 1882.

### XV. OF LEASED PROPERTY.

55. Where property under lease registered for a term of years is ordered to be sold by authority of justice, it must be sold subject to the rights of the lessee, but the latter may be compelled to give security that it will realize sufficient to cover a *bailleur de fonds*. *Dupuy & Bourdeau*, 6 L. N. 12, S. C., 1881.

### XVI. OF LITIGIOUS RIGHTS.

56. In 1868, the father of the defendant made a donation of his property to his two sons, at the charge to the defendant of paying to his sister \$200 by annual payments of \$50, of which the first was to become payable the following year. In 1871, the sister married, and she, and her husband transferred to the plaintiff, a bailiff, the claim of \$200 against defendant who was at that time absent in the States. Judgment was taken by default and

ject to registration cannot prejudice the rights of a subsequent purchaser for valuable consideration whose title is duly registered except when such title is derived from an insolvent trader. 2085 C. C.

(1) The seizure of immoveables can only be made against the judgment creditor, and he must be, or be reputed to be, in possession of the same *animo domini*. No seizure can be made of immoveables declared by the donor or testator thereof, or by law, to be exempt from seizure. Constituted rents representing seigniorial dues are seized and sold with the formalities prescribed by the Act 27 & 28 Vict., Cap. 39.

on his return the defendant filed an opposition, the principal ground of which was as follows: "*Que c'est en pleine connaissance de cause et sachant que la dite créance était payée, que le dit demandeur, l'un des huissiers de cette Cour a acheté la dite créance à ses risques et périls et dans l'espérance qu'il la ferait payer une seconde fois par le dit défendeur et à son insu.*" Proof by testimony, that the plaintiff was bailiff of the Court, that he had given \$90 for the claim, knowing that \$100 had been paid on it. *Held*, that while verbal testimony would not be sufficient, under the circumstances, to establish the payment, it would to establish the character of the claim, which evidently came within the description of a litigious right as described by article 1583 of the Civil Code (1) and the plaintiff under the rule laid down in Art. 1485 (2) had no right to an action on it. *Côté & Haughey*, 7 Q. L. R. 142, S. C. R. 1881.

### XVII. OF MOVEABLES.

57. *Resiliation of*.—Plaintiff was the assignee of one H. and defendants were wholesale dry goods merchants of Montreal. The action was instituted under Sections 132, 133, 134, 135 of the Insolvent Act, 1875, to recover goods alleged to have been retransferred to defendants by H. within thirty days of his insolvency and with a view of giving him a fraudulent preference over his other creditors. The evidence showed that the goods were shipped on the 16 and 18 March, and that H. declared he would not take delivery of them; that the goods were brought to H's store without his knowledge by a public carter who had carted for him for years, and who was in the habit of bringing packages from the station whenever he found them there without special instructions; that H's clerks took them and opened them, and took out the goods, but did not mix them with the other goods but kept them separate; that when H. found they had been taken out of the cases he said he would not keep them, and refused to allow his clerks to mix them with his stock or to break in on the lots, but ordered them to be kept separate, and that they should be returned to defendants. The goods were then put back in their cases, and the next day 20th March, returned to the railway addressed to defendants, at Montreal, and were delivered to them on the 24th March. *Held* there was no intention on the

(1) A right is held to be litigious when it is uncertain, and disputed or disputable by the debtor, whether an action for its recovery is actually pending or is likely to become necessary. 1583 C. C.

(2) Judges, advocates, attorneys, clerks, sheriffs bailiffs and other officers connected with Courts of Justice, cannot become buyers of litigious rights which fall under the jurisdiction of the Court in which they exercise their functions. 1485 C. C.

part of the Insolvent to take possession. Action dismissed. *Darling & McEntyre*, 4 L. N. 118, S. C. R. 1881.

57. In another case, action was brought by attachment, to rescind a sale of 473 half chests of tea for non-payment of price. The sale had been made through a broker at Montreal, in February, 1880, at 32½ cents per pound, *duty paid* and delivered; terms prompt cash. On their arrival in Montreal, the teas had been seized by the Customs authorities for non-payment of duties. Plea of breach of contract on the part of plaintiff, and that in the meantime and before the liberation of the goods from Customs, they have been resold, and defendants being unable to deliver had lost their profits on the resale and were besides liable to their own vendee in damages to the amount in all, of \$835.24, to which they asked the teas, should in any event be made subject. *Per curiam*.—After some negotiations with the government the teas in question were liberated, and it is proved that they were not fraudulently entered at customs. There is no proof of any default on the part of plaintiff, and he cannot be held responsible for what was an inevitable accident. If the customs authorities were to blame in the seizure, defendants have their recourse against them and not against plaintiff who sold and delivered the teas according to contract at Toronto. Judgment maintaining attachment and granting rescission. *Lambe & Hartlaub*, 4 L. N. 138, S. C. 1881.

#### XVIII. OF THINGS BELONGING TO ANOTHER.

58. Plaintiff sold a safe to one L., taking promissory notes in payment, which were not due at the time of the action, and stipulated with the purchaser that the right of property in the thing sold was to remain with the vendor until the notes were paid. The safe was delivered to L., and before the maturity of the first note, he sold to the defendant in whose hands the plaintiff revendedicated the safe and called the first purchaser L. into the case. Defendant pleaded, 1st, that the action was premature, L. not being divested of his right of property, until the first note was due and unpaid. 2nd, that L. was in possession and had a right to sell to him, and he was in good faith when he bought, and being so he had a good title. Defendant relied on Arts. 1488, 1489 C. C. (1)—*Held*, distinguishing from *Bertrand & Gaudreau* (2) that the defendant

(1) The sale is valid, if it be a commercial matter, or if the seller afterwards become owner of the thing. 1488 C. C.

(2) If a thing lost or stolen is brought in good faith in a fair or market, or from a trader dealing in similar articles, the owner cannot reclaim it, without reimbursing to the purchaser the price he has paid for it. 1489 C. C.

had a good title and action dismissed. *Goldie & Bisailon*, 7 L. N. 347, C. C. 1884.

#### XIX. OF VESSELS.

59. The sale of a vessel by deed *sous seing privé* not registered, will transfer the property to the purchaser, even as against third persons. *Michon & Marcotte*, 9 Q. L. R. 330, Q. B. 1870.

#### XX. PAYMENT OF PRICE.

60. A vendor who undertakes, by deed of sale to furnish to the purchaser at the date of payment, and before requiring payment a title to the property sold, such understanding is a condition precedent to the payment of the purchase money and the vendor can recover no part of the price, until he has furnished his title. *Petrin & Brunet*, 12 R. L. 657, Q. B. 1864.

#### XXII. PROMISE OF.

61. On the 7th December, 1874, T. G., by a promise of sale agreed to sell a farm to D. M. then a minor for \$1200, of which \$500 were paid at the time, balance payable in seven yearly instalments of \$100 each, with interest at 7 per cent. D. M. was to have immediate possession and to ratify the deed on becoming of age, and to be entitled to a deed of sale if the instalments were paid as they became due, but if on the contrary D. M. failed or neglected to make such payments when they became due he was to forfeit all rights he had to obtain a deed of sale of said farm, and to forfeit all moneys paid, which were to be considered as rent, the parties to be regarded as lessor and lessee and the promise of sale to be considered null and void. After D. M. became of age he left the country without ratifying the promise of sale; he paid none of the instalments which became due and in 1879 T. G. regained possession of the farm. *Held*, reversing the judgment of the Court below (1), that the condition precedent on which the promise of sale was made not having been complied with within the time specified in the contract, the contract and the law placed the plaintiff *en demeure*, and there was no necessity for any demand, the necessity for a demand being inconsistent with the terms of the contract, which immediately on the failure of the performance of the condition *ipso facto* changed the relation of the parties from vendor and vendee to lessor and lessee. *Grange & McLennan*, 9 S. C. Rep. 385, Su. Ct., 1883.

62. The appellant had a promise of sale of certain real estate in the City of Montreal, at the time the annual assessment became payable (26 September, 1876), but did not obtain possession until some time afterwards. He had possession as proprietor during the latter

(1) 6 L. N. 138 & 28 L. C. J. 69.

half of the year for which the tax was imposed. *Held*, that he had not such a right in the property under the *promesse de vente*, unaccompanied by tradition, as to render him liable to assessment thereon. *Hogan & City of Montreal*, 7 L. N. 378, & M. L. R. 1, Q. B. 60, 1884.

### XXIII. REDEMPTION.

63. A vendor cannot exercise the right of redemption stipulated in his favor until he has tendered the price of the property sold. *Demers & Lynch*, 1 Q. B. R. 341, Q. B., 1881.

64. Action to obtain the resiliation of the sale of a certain floating dry dock. The sale had been made by plaintiff to defendant 31st January, 1877, and in the deed a *droit de r  m  re* was stipulated on payment of \$1,600, on or before 1st November, 1878. Plaintiff tendered the balance which he pretended to be due of the \$1,600 and prayed for the cancellation of the sale. Plea that the *droit de r  m  re* had not been exercised within the delay. On proof that the delay had expired before tender of the whole amount due, action dismissed. *Goodwater & Henderson*, 4 L. N. 206, 1881.

65. Action *en bornage*.—The defendant, by a preliminary exception, set up that he was not proprietor but lessee of one K., to whom the property belonged and asked that he be placed *hors de cause* with costs against the plaintiff. The plaintiff then put K. into the case and replied specially to the first defendant that he had sold to K. with the faculty of redemption, that the delay to redeem had not yet expired, and that he had a right to have the defendant in the case, should he exercise his faculty of redemption. That, moreover, he had concealed the sale to K., and had always remained in possession and acted as proprietor. *Held*, that he could not claim to be put out of the case, except on paying the costs of action. *Lemieux v. Lemieux*, 10 Q. L. R. 365, S. C., 1884.

66. And *held*, also that the vendor *   r  m  re* preserves his *jus in re* in the things sold until the time for redemption has expired. *Ib.*

### XXIV. REGISTERED AFTER SEIZURE.

67. Where a deed of sale was executed on the 8th of April, 1878, and the property was seized on the 13th November, 1879.—*Held*, that the registration of the deed of sale subsequently to the seizure was good and confirmed the sale. *Drouin & Hall  *, 7 Q. L. R. 146, S. C. R., 1881.

### XXV. REMEDIES OF BUYER.

68. Action for the price of liquor sold and delivered in Montreal and removed in bond by defendant to Sorel. Defendant objected to the quantities charged. *Per curiam*.—There is conflict of evidence as to the quantities, and room to question whether defendant had

received the full amount charged for. But he ought upon getting the liquors into his possession to have claimed a verification and had one actually effected, after notice to the plaintiff. He has not taken such course. He has never offered back the goods and has used five-sixths of them. He must now pay as charged. *Lewis & Sen  cal*, 4 L. N. 221, S. C. 1881.

69. Action for the recovery of \$319. The defendant purchased 550 barrels of flour to be shipped to Glasgow. After some time, the defendant, in February, asked the plaintiff for the bill of lading, and as he was going to Boston he told the plaintiff to send them to him there and he would see him paid. Considerable correspondence took place, and finally the defendant telegraphed that he would prefer to pay 10 or 15 cents per barrel and not take the flour. Thereupon the flour was sold at Glasgow at a loss of \$310, with commission, &c. To this the defendant pleaded in compensation, loss suffered by him on another lot of flour which he alleged was inferior to sample. *Per curiam*.—Under such circumstances the purchaser has two courses open to him. He may either refuse the goods or he may take them at a diminution in the price. If he uses the goods he cannot say I will return your flour, and if he sells them it must be publicly and disinterestedly. They are not to be sold by himself at private sale. Under an article in our Code, the buyer keeping the thing sold may in such case obtain a diminution in the price according to an estimation of its value. He is not to value the price himself alone, but the vendor must be present, or at least be notified of the time and place of the valuation, and it must be made by expertise. I find the defendant has been negligent and that he disposed of the flour as if it belonged to himself. He is not, therefore, entitled to his claim for damages, and his incidental demand must be dismissed with costs. In the principal action, the judgment will go for \$226 and costs. *Raphael & Rouls-ton*, S. C. 1884.

### XXVI. RESCISSION OF.

70. Action against the executors of one W. deceased, and one M. vendee of W. On the 11th March, 1866, plaintiff gave to W. the promise of sale of an immoveable situated on Bonaventure St, so soon as the Corporation of the city of Montreal should have expropriated for the widening of the street, which it was expected would take place shortly. Meanwhile W. was to enter into possession. The consideration of the sale was £1100 of which £200 was paid and the balance was to be retained by W. so long as the Corporation should not have made the expropriation, paying interest meanwhile therefor. The declaration set up that the interest had not been paid, that the expropriation had been agreed to and notice given thereof in the newspapers, but the expropriation could not

be definitely settled if the majority of those interested should oppose it, and that W. had opposed it in order to avoid payment, and they demanded the rescission of the sale and a condemnation to pay. Plea that the sale was out and out, and the balance was not to be paid until the expropriation, which W. had not prevented.—*Held*, reforming the judgment of the Court below which granted a condemnation to pay the balance, that the sale should be rescinded, and defendants condemned to abandon. *Brunet & Lacoste*, 4 L. N. 245, S. C. R. 1881.

#### XXVII. RESILIATION OF BEFORE REGISTRATION.

71. The registration by a creditor of a deed of sale, which has been cancelled in good faith between the parties, is of no effect, even though the deed of resiliation has not been registered. *Longpré & Valade*, 1 Q. B. R. 15, & 4 L. N. 34, Q. B., 1880.

#### XXVIII. RIGHTS OF UNPAID VENDOR, *see* DISSOLUTION OF.

72. The defendants (unpaid vendors) sold goods to A., delivery whereof was to be made at a future time. By error the goods were delivered before the time agreed upon, but were not mixed with A's stock. Within fifteen days from date of delivery the defendants, with A's consent, took back their goods. A. at the time was unable to meet his engagements. *Held*, that the return of the goods in unbroken packages was not a payment within the meaning of the Art. 1036, C. C. *Thibodeau & Mills*, 6 L. N. 117, S. C., 1883.

73. That the unpaid vendor, under C. C., 1543, is entitled to ask for the dissolution of the sale by reason of non-payment of price, and A., in returning the goods, was only fulfilling the obligation imposed on him by law. *Id.*

74. That article 1998 of the Code, which says that in the case of "insolvent" traders (*dans les cas de faillite*) the privileged rights of the unpaid vendor must be exercised within fifteen days after the sale, has no application now, seeing that the insolvent act has been abolished. *Id.*

75. That the contract was only completed by delivery, which, in this case, took place within fifteen days prior to the voluntary return of the goods. (1)

(1) In the matter of the seizures in the Hope Estate, 6 L. N. 19, a Board of five leading counsel decided by a majority that in the case of insolvent traders the right of dissolution and the right of preference on the price must be exercised within fifteen days from the date of sale, and that the words "date of sale" must be literally interpreted. By a legislative amendment to the Code of Procedure it is now established that in cases of Insolvency the right to dissolve the sale under Art. 1543 C. C. can only be exercised during the fifteen days next after delivery. Q. 48 Vic., cap. 20. *Ed.*

76. In Appeal the judgment was confirmed in its dispositive, but the third *considerant* above was expressly overruled, and Art. 1998 *held* to apply to all traders in a state of insolvency, whether under an Insolvency Act or no. *Id.* M. L. R. 1, Q. B., 1885.

#### XXIX. TRANSFER OF OWNERSHIP.

77. The plaintiff, by seizure in revendication, sought to obtain possession or delivery of a quantity of cord wood sold by the defendant. *Held*, that the seller was not bound to deliver the things sold until payment of the price, unless the sale was on credit and that in any case when the object was indeterminate that the plaintiff had no right to revendication. *Contant & Normandin*, 11 R. L. 479, S. C., 1882.

78. An agreement by which the owner of the horse hires it for return of seven months, at the rate of \$3 per week, with the stipulation that should the payments all be duly made, the horse would become the property of the person hiring it, does not deprive the owner of his right of ownership until the whole amount is paid, and should the person hiring make default in any of the payments the owner has a right to revendicate it in the hands of a third party. *Bertrand & Gaudreau*, 12 R. L. 154, C. C. 1882.

#### XXX. USAGE OF TRADE.

79. The defendant, in making payment of a large quantity of tweed sold and delivered to him by plaintiff, stipulated that he should be allowed to examine the goods [which he alleged had not yet been done] and deduct from the amount of the next invoice, which was then coming due, any claim he might have for shortage and damage. On payment of the next invoice being demanded, he made a claim on this ground, made up by charging a quarter of yard for every hole, knot or discoloration, he could find in the goods. The claim was refused by plaintiff, and on proof, the defendant produced his clerks and one manufacturer from Ontario to establish a custom of trade to that effect. The plaintiff brought three merchants, who denied the custom of trade especially in low lines of goods. *Held* that a custom of trade to be considered binding should be general, and the proof therefore was insufficient. *MacGillivray & Parker*, 6 L. N. 308, S. C. 1883.

#### XXXI. WARRANTY.

80. In a case arising out of the sale of a horse.—*Held* that rot or tick in a horse constitutes a vice *redhibitoire* and a breach of warranty. *Drolet & Laferrrière*, 12 R. L. 359, Q. B., 1879.

81. And the disease called *tactisse* constitutes also a vice *redhibitoire*. *Gosselin & Bri-sebois*, 12 R. L. 366, S. C. 1883.

82. But the disease called *boiture intermittente* is not a vice *redhibitoire*. *Lenoir & Mandeville*, 12 R. L. 369, C. C. 1880.

83. Action for the price of a horse. Plea *inter alia* that there was a warranty and representation at the sale that the horse was only seven, and was free from redhibitory vices, whereas he was eleven and suffered from vices. The action was brought more than fourteen months after the sale and delivery of the horse. *Held* too late under Art. 1530 C. C. [1] *Crevier & La Société d'Agriculture de Berthier*, 4 L. N. 373, & 27 L. C. J. 357, S. C. 1881.

84. A purchaser of an immoveable, the boundaries of which have never been settled by a legal borage, is not entitled to a diminution of the price for a pretended deficiency in quantity at least until he has settled the boundaries in a legal manner. *Lalonde & McManus*, 12 R. L. 23, S. C. 1881.

85. The plaintiff purchased four of the houses in the block known as "Tecumseh Terrace." By the deed of sale it was mentioned that there were underground drains to Jurors street, which the purchaser had the right to use. The house abutting on Jurors street was purchased by one S., and he having occasion to build on the ground through which the drain passed, cut off the connection. *Per curiam*.—It is proved that the houses were provided with drains, and that the defendant sold the houses, with the sewers in rear of the premises. When S. built plaintiff protested against the defendant and S. The defendant pleads by several exceptions. First—prescription. She says: "You have been ten years in possession, and I am discharged after ten years." The difference is, however, that the prescription only begins from the date of the trouble, not from that of the sale. By the second exception, she says: "I bought from the sheriff, and I sold as I bought," but she does not declare that she had limited her responsibility to what she acquired by that purchase. She says she never stipulated about the sewers. The fact is there for itself. She also says the plaintiff should look to S., as he is the cause of the trouble. The defendant is wrong in this as in the other exceptions. The judgment will go for the amount sued for—\$263 with costs. *Evans v. Fisher*, S. C., 1882.—

86. A person who has purchased a pile of lumber, and has examined it in part at least before purchasing it, and has declared himself satisfied with the quality of it, cannot accept a part and reject a part on the ground that it was not as good as he thought it was. *Dufresne & Reilly*, 12 R. L. 433, S. C., 1883.

## SALVAGE—See BOTTOMRY, &c.

(1) The redhibitory action, resulting from the obligation of warranty against latent defects must be brought with reasonable diligence, according to the nature of the defect and the usage of the place where the sale is made. 1530 C. C.

## SAUVAGES.

I. LES RÉSERVES DES, *see* INDIAN RESERVES.

## SCHOOL COMMISSIONERS.

I. NOT A MUNICIPAL OFFICER.

87. A school commissioner is not a municipal officer under Art. 1033 C. C. P. (1) *Sauvé & Boileau*, 5 L. N. 134, Q. B., 1882.

## SCHOOL TAXES.

I. COMMISSIONERS EMPOWERED TO REMIT IN CERTAIN CASES.

S. 77 of the said act is amended by adding thereafter the following: "77a The school commissioners or trustees of any municipality may, by resolution passed by the said commissioners or trustees, by a two-thirds vote authorize their chairman, and upon his refusal, any other school commissioners to enter into an agreement with any person, partnership or company incorporated for carrying on any manufacturing or industrial undertaking whatsoever, within the limits of such municipality, and commute for the payment annually of a certain determinate sum of money, for a number of years, not in any case to exceed ten, all school assessments and rates that might be imposed on the buildings, land and property occupied by such person, partnership or company for the purposes of such industry.

"Provided such agreement or commutation so to be made be afterwards confirmed and ratified by said trustees or commissioners as aforesaid. Q. 45 Vict., Cap. 29, Sec. 4.

## SCHOOL TEACHERS.

I. MEANING OF TERM.

II. PENALTY FOR REFUSING TO TEACH.

III. SALARIES OF EXEMPT FROM SEIZURE.

I. MEANING OF TERM.

88. On the contestation of the seizure of the defendant's salary, *held* that a person employed as private tutor, and then travelling with his pupil, in that capacity, was not a "school teacher," within the terms of Art. 628 (2) of the Code of Procedure, so as to

(1) Concerning right of appeal. *En*.

(2) Beside the things enumerated in arts. 557-558, the following are also exempt from seizure:—

Pay and pensions of persons belonging to the Army or to the Navy, salaries of Public Officers; contingent emoluments and fees due to ecclesiastics, and ministers of worship, by reason of their actual services and the income of their clerical endowment, (the salary of school teachers) 628 C. C. P.

exempt his salary from seizure under that article. *Lafricain & Villeneuve*, 4 L. N. 54, S. C., 1881.

## II. PENALTY FOR REFUSING TO TEACH.

89. The father of a pupil of the Jacques-Cartier School will not be liable to repay the amount of a bursary granted to his son, unless it be shown that the son was put in default and refused to teach. *Principal de l'Ecole Normal Jacques-Cartier & Poissant*, 6 L. N. 132, & *Same & Pelland*, 6 L. N. 133, S. C. 1883.

## III. SALARIES OF EXEMPT FROM SEIZURE.

90. Defendant was a teacher in the employ of the Protestant Board of School Commissioners of Montreal. His salary being seized under a judgment, he claimed exemption under 628 C. C. P. *Held*, that the provisions of 38 Vic. Cap. 12, which subject a portion of the salaries of public employees to seizure, do not apply to the salary of school teachers under the control of the Boards of School Commissioners, and that under C. C. P. 628 their salary is exempt from seizure. *Lovejoy & Campbell*, 7 L. N. 397 & M. L. R. 1 S. C. 77, 1884.

## SCHOOLS.

### I. TAXATION OF.

91. A house situated on the same lot of land as Morin's College to which it belonged, and occupied as a lodging house by two of the professors of the College was held to be exempt from Municipal Taxes, as being employed for the purposes of education, although a part of the salary of the professors was retained by the College, as rent to the said dwelling house. *City of Quebec & Morin's College*, 11 R. L. 335, Rec. Ct. 1880.

92. A school for the education of young ladies, kept by private persons and not under public control is not an "educational institution" within the terms of Q. 41 Vic. Cap. 6 Sec. 26 (1) exempting such institutions from municipal taxation. *City of Montreal & Wylie*, 7 L. N. 26 & 27 L. C. J. 316, S. C. 1883, & 8 L. N. 135. Q. B. 1885. (2)

[1] Sec. 77 of cap. 15 of the C. S. L. C. is amended by adding after S. 2 the following provisions; 3. Every educational institution receiving no grant from the Corporation or municipality in which they are situated, and the land on which they are erected, and its dependencies, shall be exempt from municipal and school taxes, whatever may be the act or charter under which such taxes are imposed, notwithstanding all provisions to the contrary. Q. 41 Vic. Cap. 6. S. 26.

[2] Reversed in Supreme Court.

## SEAMEN.

I. ACTION FOR WAGES, *see* MERCHANT SHIPPING.

II. ARTICLES OF, *see* MERCHANT SHIPPING.

## SECRETARY TREASURER.

I. OF MUNICIPALITY MUST DELIVER UP BOOKS ON EXPIRATION OF HIS DUTIES UNDER PENALTY *See* MUNICIPAL CORPORATIONS.

## SECRETION.

### I. WHAT IS.

93. Case of *Molson & Carter*, [II. Dig. 141-62] reported *in extenso* 25 L. C. J. 65, Q. B. 1880.

94. There is no distinction between "secrection" and fraudulent preference," and where the defendant had, within three months of his insolvency, made over to another, stock which was still unpaid for.—*Held* to be secrection. *Gault & Dussault*, 4 L. N. 321 Q. B. 1881.

95. Attachment before judgment on the ground that the defendant intended to remove to the United States and was secreting her effects. No proof of the first ground, and under the second it was proved that she had sold all her effects, moveables, &c., some time before the attachment, for the sum of \$2,000 which had been handed over to privileged creditors. The sale was a public one. Attachment quashed. *Latour & Brunelle*, 4 L. N. 141, S. C., 1881.

96. The defendant refused to deliver wood, according to contract, demanding a higher price than had been stipulated in a notarial agreement. *Held*, that this was not a secreting, and the capias issued against him was quashed without costs. *Mantha & Séguin*, 6 L. N. 12, S. C. 1882.

## SECURITY.

I. FOR COSTS *See* COSTS.

II. IN APPEAL *See* APPEAL.

## SEDUCTION.

I. ACTION EN DECLARATION.

II. DAMAGES FOR.

III. LIABILITY FOR.

I. ACTION EN DECLARATION.

97. In an action en déclaration de paternité, where the defendant admitted the

connection with the mother, but assigned a date which would disprove his paternity of the child and there was no evidence of improper conduct of the mother otherwise: that the Court would give weight to the declaration on oath that the defendant was the father. Absolute certainty in such cases is not required; it is sufficient to establish a strong probability that the defendant is the father. *Denault & Banville*, 7 L. N. 149, S. C. 1884.

98. The plaintiff, tutor to a minor child, sued the defendant in declaration of the *paternité* and for the maintenance of the child. The defendant pleaded a *défense en fait*, and also the misconduct of the mother as well as a demurrer on the ground that he the defendant had not been given the alternative of taking charge of the child. *Held* that neither the misconduct of the mother, nor the ground of the demurrer were an answer to the action, but that as a *commencement de preuve par écrit* was wanting and there was nothing but a question put by the defendant in cross examination of a witness to let in parole evidence, that the proof was insufficient, and the action ought to have been dismissed. *Turcotte & Nacké*, 7 Q. L. R. 196, S. C. R. 1881.

## II. DAMAGES FOR.

99. Action of damages against the defendant for seduction and *frais de gesine*. The declaration set up that the plaintiff had lived with the defendant and that he had taken advantage of her ignorance and inexperience by assuring her that there was no danger and promising to marry her should she become *enceinte*. In June, 1880, she gave birth to a child. Nevertheless, and without any further stipulation, she continued to live with him for three years and a half after conception. *Held*, that she could only recover damages on the presumption of a promise of marriage, and the facts destroyed this presumption so that she could recover nothing beyond the *frais de gesine*. *Turcotte & Nacké*, 7 Q. L. R. 230, S. C. R., 1881.

## III. LIABILITY FOR.

100. An action *en déclaration de paternité* may be maintained where it is proved that the defendant had connection with the mother at the time, though it also appear that the girl's conduct was loose and others were guilty with him. *Lizotte & Decheneau*, 6 L. N. 170, S. C. R., 1883.

## SEIGNORIAL RIGHTS.

### I. COMMUTATION OF.

### II. TRANSFER OF.

### I. COMMUTATION.

101. A hypothec given before the Seignorial Act of 1854, to pay to the Seigneur the constituted rent for the commutation of the *lods et ventes* is extinguished by the payment of the indemnity by the government to the Seigneur. *Lalonde & Brunette*, 12 R. L. 594, Q. B., 1866.

### II. TRANSFER OF.

102. Sections 3 & 4 of 38 Vic., Ch. 20, of Quebec, which permits a seigniorial proprietor to sell and transfer the constituted rents representing the *cens et rentes*, describing them by the name the Seigniority bears, includes also the right to hypothecate them, and a hypothec so constituted by the proprietor, since the coming into force of the cadastral plan, constitutes a valid hypothec on the constituted rents, these constituted rents being known to the public as representing a seigniority. *Pangman & Pausé*, 12 R. L. 440, S. C., 1883.

## SÉPARATION DE BIENS.

### I. RIGHT OF, *see* MARRIAGE.

## SÉPARATION DE CORPS.

### I. GROUNDS OF, *see* MARRIAGE.

## SÉPARATION DE PATRIMOINE— *See* PARTITION.

## SEQUESTRATOR.

### I. APPOINTMENT OF SEQUESTRATION.

### II. DUTIES OF SEQUESTRATOR.

### III. RIGHT TO SEQUESTRATION AFTER REMOVAL OF EXECUTOR.

### I. APPOINTMENT OF SEQUESTRATOR.

103 Where a certain property, subject to mortgage, had been transferred by deed of sale and the hypothecary creditor took action and obtained, during the progress of the action, the appointment of a sequestrator to collect the rents, &c. *Held*, in appeal, on a contestation concerning the rents, that the appointment of a sequestrator was uncalled for. *Baylis & Stanton*, 27 L. C. J. 203 & 2 Q. B. R., 350 Q. B., 1882.

104. A sequestrator should not be appointed when one of the parties has title and is in possession; and accordingly, where the defendant was in possession of certain lots un-

der location tickets, and an action was brought to have it declared that the letters patent had been obtained by fraud, &c., on application by the plaintiff for the appointment of a sequestrator pending the suit, *Held*, that it should be refused. *McCracken & Logue*, 6 L. N. 90, S. C. R., 1883.

105. Respondant applied to the Court to name a *séquestre* under Art. 645 C. C. P. The Court, without expressing any opinion as to whether the Court of Queen's Bench, had jurisdiction to appoint a *séquestre*, refused the application on the ground that the application had been made in the Court below, that the application had been refused and that no appeal had been taken from that judgment, and further because the application might be renewed in the Court below. *Dawson & McDonald*, 6 L. N. 155, Q. B., 1883.

## II. DUTIES OF SEQUESTATOR.

106. A sequestrator appointed for the property of a succession is bound to render an account of his administration. This account must be sworn to and contain, under distinct heads, the receipts and expenses, and a balance sheet, and must be accompanied by vouchers. *Durocher & Lauzon*, 12 R. L. 404, S. C., 1883.

## III. RIGHT TO SEQUESTRATION AFTER REMOVAL OF EXECUTOR.

107. Appeal from a judgment of the Superior Court, removing appellant, as executor, owing to mal-administration. *Per curiam*. The respondent moves to have a sequestrator to the estate appointed. She relies entirely on the judgment of the Court below. The Court refused the respondent's petition. A sequestrator is only appointed on special cause. The judgment is not cause even if the Court of Appeals has original jurisdiction in the matter, when the application is grounded on facts within the knowledge of the moving party, prior to the judgment of the Court below. *Ross & Ross*, 5 L. N. 134, & 2 Q. B. R. 349, Q. B. 1882.

## SERMENT JUDICIAIRE—See PROCEDURE.

## SERVANT.

I. DEARATION OF, *see* MASTER AND SERVANT.

## SERVICES—See PROCEDURE.

## SERVITUDES.

I. ACT CONCERNING REGISTRATION OF, *see* Q. 46 VICT., CAP. 25.

- II. ACTION CONCERNING.
- III. MUR MITOYEN.
- IV. RIGHTS OF PASSAGE.
- V. WATERCOURSES.
- VI. WHAT ARE.

## I. ACTION CONCERNING.

108. In a possessory action concerning a servitude, the plaintiff and defendant were mill owners. The plaintiff's mill was situated on a small river called *la Rivière du Petit Moulin*. That belonging to the defendant is on the river Port-Joli, in the same neighbourhood, as shown upon the plan filed in this cause, which is admitted to be correct. The water of the *Rivière du Petit Moulin*, being at certain seasons of the year insufficient for the working of the plaintiff's mill, the owner of that mill, more than thirty years ago, cut a canal from the river Port Joli, on which the defendant's mill is situated, to the *Rivière du Petit Moulin*, on which the plaintiff has his mill, which canal causes a considerable portion of the water of the river Port Joli to flow from that river and fall in the *Rivière du Petit Moulin*, at a point above the plaintiff's mill, thus taking from the river Port Joli, water absolutely required for the working of the defendant's mill, and furnishing a sufficient supply of water to the plaintiff's mill. In connection with the said canal, and in order to make it effectual for the purpose for which it was constructed, a mill dam was, by the *auteurs* of the plaintiff, placed across the river Port Joli. The said mill dam and a part of the said canal are situated on the property of the said defendant. In 1882 the defendant cut a *saignée*, a ditch or trench, on his own land, from a point on the said river Port Joli, above the said dam to a point below it. The *saignée* or trench so cut was intended to have and has the effect of rendering the dam comparatively inoperative, of preventing the water of the river Port Joli from being turned into the *Rivière du Petit Moulin*, and of the flow in its natural course, towards the defendant's mill; the result, as the defendant says in his factum, was: *à son tour le moulin du demandeur cessa de tourner, et comme conséquence, la présente action fut intentée contre le défendeur*. The contention of the defendant is: *que dans notre droit, en matière de servitude, on ne peut agir qu'au pétitoire, and towards the close of his factum, he says: En résumé pas d'action possessoire en matière de servitudes*.—*Held* that where the plaintiff produces certain titles, in support of his possession of a servitude, which titles, however, had not been pleaded, and were objected to.—*Held* that such objection would be fatal if the action were a petitory action, or in the nature of a petitory action, because in such a case the action would be founded on the title, but the present case being founded, not on the titles, but on the possession, the titles were produced merely to characterize the



possession which has always been allowed in this district, and that the possessor of a servitude, who is disturbed in his possession, may proceed by possessory action against the disturbing party. *Belanger vs. Dupont*, 10 Q. L. R. 221, S. C. R. 1884.

### III. MUR MITOYEN.

109. The provisions of Article 520, C. C., [1] concerning division walls applies to dwellings, and a proprietor who is obliged to construct such a wall between him and his neighbour is not bound to any other formality but a simple notification, but he is bound to replace the premises, on the completion of the wall, in the same condition in which they were before he commenced to build and is responsible for any damages he may have caused whilst doing so. *Massé & Leclerc*, 12 R. L. 557, S. C., 1883.

110. Action for the recovery of damages alleged to have been caused to the plaintiff by the demolition of a wall separating the properties of the parties. The defendant, by a first plea, denied the plaintiff's right of action, on the ground that her possession was that of a tenant, and not of a proprietor. This plea was held to be unfounded. By a second plea the defendant offered \$30 damages. The evidence showed that the wall was entirely constructed on the property of the defendant, and at a distance of five feet from the line of plaintiff's property. This proof was illegal, seeing the issue that had been raised by the plea; but the defendant moved at the final hearing to be allowed to amend his plea, and make it conform to the proof, and this would be granted, but he would have to pay a considerable amount of costs. Judgment for \$30 and costs up to filing of plea, and action dismissed as to the balance,—the defendant to pay all costs on his side from the same time. *Lyman & Mullin*, S. C., 1883.

111. Where it was shown that one of the parties to a cross demand had made a recess in the thickness of a mitoyen wall between his premises and those of the other party and this without the consent of the other party or in default thereof, and not the refusal of the appellant's so to consent without causing to be settled by experts the necessary means to prevent the new works from being injurious to the rights of others.—*Held* that he was bound to restore the wall to its original

[1] Every person may oblige his neighbour in incorporated cities and towns, to contribute to the building and repair of the fence-wall separating their houses, yards and gardens situated in the said cities and towns, to a height of ten feet from the ground or the level of the street, including the coping and to a thickness of 18 in., each of the neighbours being obliged to furnish 9 in. of ground saving that he for whom such thickness is not sufficient may add to it, at his own cost and on his compound stall.

condition. *Stephens & Walker*, 6 L. N. 286, Q. B., 1883.

112. In another case the parties owned adjoining properties and the respondent pretended that the appellant's house was constructed so as to rest upon a gable wall of respondent's building and he asked for the demolition of the wall unless the appellant paid half the value of the gable. Action dismissed on the ground that the plaintiff's wall was not mitoyen. *Quinn & Leduc*, 6 L. N. 287, Q. B., 1883.

### IV. RIGHT OF PASSAGE.

113. The owner of a property has the right of passage over and partial use of his neighbor's property to repair the wall of his house adjoining the other property without previously indemnifying his neighbor for the probable damages which he may cause in so doing. *La Société de Construction Canadienne de Montréal & Lebrun*, 26 L. C. J. 143, S. C. R., 1881.

114. *PER CURIAM*.—A l'action négatoire qui lui conteste un droit de passage sur l'immeuble du demandeur, contigu au sien, le défendeur plaide que sa propriété est enclavée; que ses auteurs et lui ont exercé un droit de passage chez le demandeur pour l'exploitation de leur propriété, depuis au-delà de 30 ans, et que la servitude de passage lui est ainsi acquise par prescription; que le chemin qui a servi au dit passage a été tracé en commun il y a au-delà de 40 ans, par ses auteurs et par ceux du demandeur; qu'il sert de sortie à plusieurs autres propriétaires, et qu'il est devenu chemin public par l'usage constant que le public en a fait depuis de longues années.—*Jugé*: Que sous notre droit, la servitude de passage en cas d'enclavement devient une exception à la maxime *nulle servitude sans titre* et ne peut pas encourir la prescription. *Roy & Beaulieu*, 9 Q. L. R. 97, S. C. 1883.

115. Que si le propriétaire d'un fonds enclavé n'a pas exigé en justice et obtenu par titre le droit au passage l'usage qu'il a fait d'un chemin de passage chez son voisin est réputé précaire, de tolérance, et ne peut créer aucun droit. *Id.*

116. Que si l'enclave n'existe que par le fait des auteurs du propriétaire enclavé, le passage doit être pris de préférence sur la propriété détachée par leur acte de l'immeuble maintenant enclavé, à moins que ce passage ne nécessite des dépenses hors de proportion avec la valeur du dit immeuble. *Id.*

117. Action *négatoire* to close a road or passage leading to the highway from defendant's land across that of plaintiff. *Held*, that the right of passage in favor of an enclavé is based upon necessity not convenience, and ceases *de plano* with the necessity where no indemnity has been paid. (1) *Wilder & Sundberg*, 7 L. N. 52, S. C., 1884.

(1) In appeal.

118. And if under our law the right of passage for an enclavé may be perfected by prescription the property must be enclosed during the whole time necessary to acquire prescription, and if it ceases to be so enclosed prescription ceases to run. *Id.*

119. And the passage in dispute having been habitually closed at its ends by gates and bars and divided off from the remaining land nor fenced on either side, and travelled only by the mere tolerance of the owner, has not become a public municipal road under the provisions of 18 Vic. cap. 100, sec. 41, ss. 9. *Id.*

#### V. WATER COURSES.

120. Le défendeur en cette cause est propriétaire d'un moulin à farine à Ste. Rose, et a construit une chaussée sur la rivière de cette localité pour se procurer un pouvoir d'eau qui fait mouvoir ce moulin. Le demandeur, de son côté, est propriétaire de deux terres situées sur le bord de la rivière, l'une à environ deux milles, et l'autre à trois milles de la chaussée en question. L'action est en dommages causés par la submersion de ses terres et pour faire démolir cette chaussée. Experts were appointed. *Labelle & Limoges*, 7 L. N. 294, S. C., 1878.

121. Plaintiff, proprietor of several lots of land on the borders of the River Chaudière, claimed from defendants damages to the amount of \$3,500 for loss of land occasioned by the construction of a dam in connection with their mill on said river, and the inundation and submersion of their property in consequence; and also because defendants had driven piles and erected quays on the land so submerged and had placed booms there to enclose their timber, and in fact, had converted the property to their own use and occupied it since about March, 1878. One of the defendants sued in her own name, and as having been *commune en biens* with her late husband, and as tutrix to her children, pleaded a *défense en droit* and an exception, and to the special answer in law of plaintiff a special replication. By her *défense en droit* she set up, she pleaded prescription of two years as for a *quasi-délit*; and also that the mode of procedure in such cases provided by chap. 51 of the C. S. L. C., excluded the ordinary action which plaintiff had adopted. *Held*, following *Jean & Gauthier*, (1) that as the construction of the dam was neither an offense nor a quasi-offense, that the prescription of two years did not apply, nor was the procedure provided by the statute referred to, exclusive of plaintiff's recourse by common law. *Breakley & Carter*, 7 Q. L. R. 286, S. C., 1881.

122. And *held* also, that the person who had constructed the dam was not discharged from liability by the subsequent sale of the mill. *Id.*

(1) 11 Dig. 703-129.

123. Action of damages by the proprietor of a flour mill, which had been in existence for a number of years on the Rivière Giasson, against the defendant who owned a property higher up, and who had quite recently constructed a dam for another flour mill. The plaintiff complained that the defendant had stopped the course of the water, by which means he was deprived of the use of it and had suffered damage. Plea that defendant was acting within his rights under 503 C. C. (1) *Held*, maintaining the action, that he could only use the water so as not to interfere with the rights of the plaintiff. *Proulx & Tremblay*, 7 Q. L. R. 353, S. C. R., 1881.

124. Action in demolition of a dam built by the defendant below the plaintiff's property by which the flow of water was obstructed, and for damages. *Held*, reversing the judgment of the Queen's Bench, [2] that where a person complains that the flow of water in a stream, passing through his land, has been obstructed by the act of the owner of the lower land, and the issue is raised that the plaintiff, by his own works, has altered the natural course of the stream, it is for him to prove, in order to make out a case entitling him to relief that the servitude as it existed previous to the changes made by himself, that is the natural and established flow, has been interfered with by the lower proprietor. *Fréchette & La Cie Man., de St-Hyacinthe*, 7 L. N. 34, & 28 L. C. J. 202, P. C. 1883.

125. In another case, the action was instituted for the recovery of \$2,000 damages, alleged to have been suffered by the plaintiff by reason of the damming up of a creek, tributary of the North River, traversing plaintiff's property during the years 1871 and 1873. The plaintiff alleged that for the purpose of driving the sawlogs to defendant's mill on the River Nation through the branches thereof, he, defendant had erected a dam on the west branch of the creek above plaintiff's farm, and one at a lake in lot No. 17, five miles above said farm and another dam about 3½ miles above the latter dam; also another below the plaintiff's farm in the 5th Range of the township of Lochabar; that the construction of these dams caused the water to overflow the flats on plaintiff's property, depriving himself the use of 90 acres for farming purposes. The plaintiff alleged specially that the creek in question, where it falls

(1) He, whose land borders on a running stream, not forming part of the public domain, may make use of it as it passes, for the utility of his land, but in such manner as not to prevent the exercise of the same right by those to whom it belongs, saving the provisions contained in Cap. 51 of the C. S. L. C., or other special enactments. He, whose land is crossed by such stream, may use it within the whole space of its course through the property, but subject to the obligation of allowing it to take its usual course, where it leaves his land. 503 C. C.

[2] 5 L. N. 187 & 1 Q. B. R. 378.

through his farm, is not a navigable or even a floatable stream, and that the water and the bed of the stream belong to him as his property. Plea *inter alia*, that by law, plaintiff could not recover damages until they were established and ascertain, under cap. 51 C. S. L. C., that the plaintiff never called upon defendant to ascertain the damages according to the provisions of the Act. Judgment dismissing this plea confirmed. *MacGillivray & McLaren*, 5 L. N. 199, S. C. R. 1881.

126. Action of damages for the flooding of the plaintiff's land during the harvest time by the overflow of the river on which both the land of the plaintiff and the land of the defendant were situated. Plaintiff alleged that the overflow was caused by acts of defendant who was situated further down the stream. For want of proof of the cause of the overflow, action dismissed in appeal. *Paulet & Guéremont*, 7, L. N. 308, Q. B. 1884.

127. The plaintiff complained that the defendant, by the making of a trench or drain, had changed the course of a rivulet or stream, passing through his property, so as to cause it to pass through the land of the plaintiff, where it never passed before, and to the serious injury of the plaintiff. *Held*, that such diversion of the water course, constituted an illegal servitude on the plaintiff's property. *McGuire & Donovan*, 10 Q. L. R. 267, S. C. 1884.

#### VI. WHAT ARE.

128. By deed of partition, of 1811, between the proprietors of a seigniori, it was agreed that the co-partitioners should not erect for their own profit any grist or saw mill on their respective portions, within a league of the mill then existing on the seigniori. By deed of sale in 1850, a piece of land forming part of the same seigniori was sold by the representatives of one of the co-partitioners, with a stipulation that the purchasers and their representatives should never build nor permit to be built any flour mill or grist mill, whether such mill were operated by water, steam or any other motive power. In an action brought to compel the respondent to demolish a grist mill.—*Held*, that the deed of 1811, created a reciprocal servitude in favor of each portion of the seigniori divided by the deed of partition, but, if this servitude was in its nature, a seigniorial servitude, it was abolished by the Seigniorial Act of 1854, whether the servitude be considered as a principal right or as an accessory of the right of *banalité*. *Mondelet & Roy*, 7 L. N. 352, Q. B. & M. L. R. 1 Q. B. 9, 1882.

129. And that if the servitude was not seigniorial, it was constituted in favor of a seigniori, and it disappeared by the concession of the real estate in favor of which it was created. *Id.*

130. And that the deed of sale of 1850 did not create a real servitude, but only a personal obligation, inasmuch as no *héritage dominant* was mentioned therein. *Id.*

131. And, that the existence of a *héritage dominant* not mentioned in the deed cannot be proved by verbal evidence. *Id.*

#### SESSIONS OF THE PEACE—See JUDGE OF SESSIONS.

#### SETTLERS.

##### I. PROTECTION OF.

Her Majesty by and with the advice and consent of the Legislature of Quebec enacts as follows :

Public lands, hereafter granted to *bonâ fides* settlers by instruments in the form of location tickets, licenses of occupation, or certificates of sale, or other titles of a similar nature or to the same effect, in virtue of the provisions of the Act. 32 Vict. Cap. 11, respecting the sale and management of Public Lands and the amendments thereto, and according to the orders in Council and regulations passed in virtue of the said act, shall not, so long as letters patent are not issued therefor, be pledged or hypothecated by judgment or otherwise ; nor be liable to seizure or execution for any debt whatsoever, except for the price of such lands, notwithstanding arts. 1880 & 1881 of the C. C. and arts. 553 & 554 of the C. C. P. Nevertheless such right of exemption from seizure and execution shall not extend beyond five years from the date of the location ticket, license of occupation, certificate of sale or other similar title as aforesaid. Q. 45 Vict. Cap. 12. Sec. 1.

2. Every grantee of public lands in this province who shall have acquired the same, since the passing of this act by location ticket, license of occupation, certificate of sale or other similar title, issued in his name or in the name of another person of whom he has become the grantee, assignee, or legal representative, may during the three months next, after issue of his letters patent, select a certain number of acres of such land not exceeding one hundred, as his homestead ; and so soon as he shall have made a solemn declaration of such selection in the form of schedule A to this act, and that such declaration shall have been acknowledged, in accordance with the provisions of the act of the Parliament of the Dominion of Canada 37 Vict. C. 37 before a justice of the peace and shall have been enregistered, within the delay of three months next after the issue of the letters patent, in the registry office for the registration division of the place where such property is situated, the land, so selected as a homestead, with the buildings and appurtenances thereon erected, and so long as they shall remain in the possession of such grantee, or in the possession of his widow and children, his heirs, legatees or donees, as the rights, title and interest they may have therein, shall notwithstanding the provisions of arts 1880 & 1881 of the C. C. & Arts. 553 & 554 of the C. C. P., be exempt from seizure and execution during the 15 years next after the date of the enregistration of such declaration, for the payment of debts which they may have contracted either before or during such period, unless it be for the price of such lands or for the extinction of the lawful charges and hypothecs for which they may have themselves have pledged the property after the issue of such letters patent. Upon receipt of such declaration and upon payment of a fee of fifty cents, the registrar

shall be obliged to register such declaration and to furnish, upon payment of a similar fee of fifty cents, to the grantee or his representative, as aforesaid, a certificate in accordance with schedule B, to this act, which certificate shall be valid before all Courts of justice in this province.

3. Without prejudice to the art. 556 and following, of the C. C. P. the moveables and effects herein after enumerated whether they be in the possession of a *bona fide* settler, as described in section 1 of this Act. or in the possession of his widow or children, his heirs, legatees or donees, shall be exempt from seizure and execution for any debt whatever, after the date of the granting of such lands and during 15 years from the issuing of the letters patent, to wit:

1. The beds, bedding and bedsteads in ordinary use by his family.

2. The necessary and ordinary wearing apparel of himself and his family.

3. One stove and pipes, one crane and its appendages one pair of andirons, one set of cooking utensils, one pair of tongs and a shovel, one table, six chairs, six knives, six spoons, six forks, six plates, six tea cups, six saucers, one sugar basin, one milk jug, one tea pot, all spinning wheels and weaving looms in domestic use, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in common use and 10 volumes of books;

4. All necessary fuel, meat, fish, flour and vegetables sufficient for him and his family for three months;

5. Two horses or two draught oxen, four cows, six sheep, four pigs, eight hundred bundles of hay, other forage necessary for the support of these animals during the winter and provender sufficient to fatten one pig and to maintain three during the winter.

6. Vehicles and other implements of agriculture; The debtor may select the above chattels from any larger number of the said kind.

Nevertheless the chattels mentioned in such sections 3, 4, 5 & 6 shall not be exempted from seizure and execution for the purchase price thereof.

4. If a settler has occupied a lot on Crown lands for more than five years before letters patent are issued, any excess over such five years shall be deducted from the fifteen years' exemption mentioned in the preceding section.

5. Nothing in the present Act, shall be interpreted as exempting a lot on crown lands, occupied under a location ticket, from the payment of the municipal and school taxes, and assessments for church purposes, now due or which may hereafter become due thereupon.

6. The acts of this Province. 31 Vic. Cap. 20, 32 Vic. Cap 13, are hereby repealed; but the repeal of these acts shall not have the effect of again putting into force the provisions of the law which they themselves repeal, nor have the effect of invalidating the acts legally performed and so repealed.

All the provisions of the acts mentioned in the present section, shall continue to apply to public lands, conceded or granted to *bona fide* settlers, before the passing of this act, and so long as such concessions or grants, shall not have been cancelled according to law.

7. This act shall apply to fishermen who are also settlers and shall come into force on the day of its sanction.

SET-OFF—See COMPENSATION.

SEWING MACHINES—See PIANOS.

## SHARES.

I. SUBSCRIPTION FOR, *see* COMPANIES.

## SHAREHOLDERS.

I. LIABILITY OF, *see* COMPANIES.

SHERIFF'S SALE—*See* SALE JUDICIAL.

## SHERIFFS.

I. SURETIES OF.

132. In an action against the Sheriff of the District of Rimouski and his sureties.—*Held* that the sureties furnished by a Sheriff, under cap. 92, Cons. Stat. L. Canada, cannot plead the nullity of their bond, because it has not been made in duplicate, nor because it has been received by the prothonotary in the absence of the Judge, nor because no notice of it has been given to the Attorney General, nor because the sureties had not made oath as to their solvency, and that such bond is not given on behalf of Her Majesty the Queen, but for the benefit of any person who requires to make use of it. *Laurent & Blais*, 11 R. L. 272, Q. B. 1881.

## SHIP AGENTS.

I. NOT LIABLE TO A TAX IMPOSED ON BROKERS AND COMMISSION MERCHANTS.

133. In three cases, the plaintiffs sued to recover \$50 levied on them by the City of Montreal, under a by-law imposing a tax on brokers, money lenders and commission merchants and which they had paid under protest. The plaintiffs were ship agents, and in two of the cases, were part owners of the vessels of which they were agents.—*Held* that the question was governed by the Arts. of the Code 1735 & 1736, defining brokers and commission merchants, and that as the plaintiffs did not come within that definition, they were not liable to the tax and had a right to recover. *Thompson & City of Montreal, Shaw & City of Montreal*, and *Sidley & City of Montreal*, 4 L. N. 327, C. C. 1881.

SHIPPING—*See* MERCHANT SHIPPING.

## SHIPWRECKS.

I. ACT RESPECTING, *see* C. 47 VIC., CAP. 42.

SHORTHAND—*See* STENO-  
GRAPHERS.

## SHORTLY.

I. MEANING OF TERM IN CONTRACT FOR GOODS  
TO ARRIVE, *see* SALE, DELIVERY.

## SIDEWALKS.

I. ASSESSMENTS FOR, *see* MUNICIPAL COR-  
PORATIONS.

## SIGNATURE.

I. BY CROSS.

134. A receipt signed with a cross before  
two witnesses is good and may be proved by  
the witnesses, even though one of them signed  
with a cross. *Querret & Bernard*, 1 Q. B. R.  
69, Q. B. 1880.

SIGNIFICATION—*See* PROCEDURE,  
SERVICE.

SLANDER—*See* LIBEL, &c.

SOCIÉTÉ—*See* PARTNERSHIP.

SOCIÉTÉ DE CONSTRUCTION—*See*  
BUILDING SOCIETIES.

SOLICITORS—*See* ATTORNEYS.

## SPECIAL ASSESSMENT.

I. PROCEEDING AGAINST, *see* MUNICIPAL  
CORPORATIONS.

## SPECIAL REPLICATION.

I. CANNOT BE FILED WITHOUT PERMISSION OF  
THE COURT, *see* PLEADING.

SPEEDY TRIAL—*See* CRIMINAL  
LAW.

## SQUATTERS.

I. RIGHTS OF.

135. J. P. represented by the plaintiffs, by  
a deed bearing date the 15th March, 1871, and  
registered the 2nd February, 1874, sold to  
one R. a certain lot of 100 acres, at \$2 per  
acre. R., after making some trifling improve-  
ments, abandoned the land some four or five  
years ago, and the defendant, without any  
title whatever, took possession of one half of  
it, and erected upon that half a house  
and cleared about 18 acres.—*Held* that a  
squatter entering upon lands with a know-  
ledge that he has no right to do so, and with-  
out making proper enquiries as to the real  
owner of such lands, will be held to have been  
in bad faith and has no claim against the pro-  
prietor, nor any lien upon such lands, for the  
improvements he has made thereon, during  
his occupancy with his own materials. *Galar-  
neau et al vs. Chrétien*, 10 Q. L. R. 83, S. C. R.  
1884.

## STAMPS.

I. ON EXHIBITS, *see* LEGISLATIVE AU-  
THORITY.

II. ON PROCEDURE, *see* PROCEDURE.

STATUS—*See* CIVIL STATUS.

## STATUTE OF FRAUDS.

I. ADMISSION OF PAROLE EVIDENCE UNDER,  
*see* EVIDENCE PAROLE.

## STATUTES.

I. CONSTITUTIONALITY OF, *see* ACTS OF PAR-  
LIAMENT.

II. PROCEDURE TO SET ASIDE, *see* PROCE-  
DURE.

## STEAMBOATS.

I. ACT RESPECTING, *see* C. 44 VIC., CAP. 21.

II. INSPECTION FEES, C. 45 VIC., CAP. 45;  
C. 47 VIC., CAP. 20; C. 48-49 VIC., CAP. 75.

## STENOGRAPHERS.

I. REGULATIONS WITH REGARD TO, *see* PROCEDURE, PROOF AND HEARING.

STOCKS—*See* SHARES.

## STONE.

I. MEASUREMENT OF, *see* WEIGHTS AND MEASURES.

## STREAMS.

I. DAMAGES CAUSED BY, *see* SERVITUDES, WATER COURSES.

## STREET RAILWAY.

I. LIABILITY OF, *see* MONTREAL CITY PASSENGER RAILWAY.

STREET—*See* MUNICIPAL CORPORATIONS.

## I. OBSTRUCTION OF.

136. The plaintiff who owned a large property, on the corner of Grant and Prince Edouard streets, in the City of Quebec, complained that, in 1875, the Q. M. O. & O. Railway had run their line through Prince Edward street, which was only 26 feet wide, and that the defendant, the Corporation of the City, had allowed them to do this, instead of maintaining the street clear and free of obstacles as they were by law bound to do. That the line of railway complained of passed within 5 feet 9 inches of the sidewalk on plaintiff's side, and immediately in front of his property, and had thereby rendered access to his houses in carriages or vehicles impossible. That the line of railway in question was being used daily, and that the danger caused by the movement of the engines and cars, the noise they made, the snow and ice which in winter time they piled up on the side of the street, the smoke, vapor and sparks emitted by the locomotives, all rendered the plaintiff's houses uninhabitable at a loss to the plaintiff of \$10,000, or a rental of \$1,200 per year. Plea that the road in question was constructed by the authority of the Legislature, which fixed its eastern limit in the City of Quebec and gave it the right to have, and imposed upon the City the duty to furnish it, a passage through the City to said eastern limit. That the work was done with all the care possible and that more than six

months had elapsed since the construction of the road, whereby the plaintiff's right of action was prescribed. *Held*, that the Act 16 Vic., Cap. 100, on which the defendants relied, did not authorize the construction of the railway in the streets of the City of Quebec, but merely gave to the Corporation of the City authority to pass a by-law to that effect and to regulate the manner in which it should be carried out, which the Corporation had not done, and in permitting the said railway to be carried through the streets of Quebec, otherwise than as authorized by the said Act, the Corporation had acted illegally and had rendered themselves jointly and severally liable with the railway for the damage caused thereby. *Renaud & La Corporation de Québec*, 8 Q. L. R. 102, S. C., 1881.

137. And the allegation in the declaration "*que le passage constant des locomotives et des wagons dans la rue près des maisons les rend inhabitables*," and also, "*que les logements sont en outre détériorés par suite de ce que ci-haut dit*" was a sufficient allegation of the damage caused to the houses by the passage of the locomotives and waggons. *Ib.*

138. And as the damage was continuing and permanent, no prescription could be invoked until after it had ceased. *Ib.*

139. And the special recourse for damage or indemnity provided by 29 Vic., Cap. 57, Sec. 35, S. S. 4 to 15, was only for cases where the demand for indemnity arose from legal and authorized acts, and not from illegal and unauthorized ones. *Ib.*

## STRIKES.

I. EFFECT OF ON CONTRACTS, *see* CONTRACTS, INTERPRETATION OF.

SUB LEASE—*See* LESSOR & LESSEE.

## SUBROGATION.

I. OF PAYMENT, *see* OBLIGATIONS, PAYMENT.

## SUBSCRIPTION.

I. TO COMPANIES, *see* COMPANIES.

## SUBSIDIES.

I. TO CERTAIN RAILWAYS, *see* Q. 45 VIC. CAP. 23.

SUBPOENAS—*See* PROCEDURE.

## SUBSTITUTION.

- I. DISCHARGE OF TRUSTEE.
- II. LIABILITY OF GRÉVÉ.
- III. LIABILITY OF SUBSTITUTED PROPERTY.
- IV. OF MOVEABLE PROPERTY.
- V. POWERS OF CURATOR.
- VI. POWERS OF INSTITUTE.
- VII. RESILIATION OF.
- VIII. RIGHTS OF CREDITORS.
- IX. RIGHTS OF SUBSTITUTE.
- X. SEIZURE OF SUBSTITUTED PROPERTY.
- XI. WHAT IS.

## I. DISCHARGE OF TRUSTEE.

140. Petition to be relieved as trustee to a substitution, created by contract of marriage, and to appoint a successor. The grounds of the petition were that the petitioner was about to leave the province and did not intend to permanently reside in Canada, and that consequently he would not be able to see to the due execution of the trust. Petitioner's attorney having declared he could find no authority to show that the Court had jurisdiction it was ordered that nothing be taken by petition. *Walcot Exp.*, 8 Q. L. R. 318, S. C., 1882.

## II. LIABILITY OF GRÉVÉ.

141. The plaintiff proceeded to execute a judgment which he had obtained against the defendant personally, and the defendant in his quality of curator to the *appelés* in a substitution, met him with an opposition *à fin d'annuler*, on the ground that the property was substituted, and that he, as curator to the children, had a right to prevent the sale. *Held*, confirming the judgment which ordered the things to be sold, but maintained the right of the curator to the price under Art. 931 C. C. (1) *Trust & Loan Company & Fraser*, 5 L. N. 219, S. C. R., 1882.

## III. LIABILITY OF SUBSTITUTED PROPERTY.

142. Plaintiff having a judgment against the defendants, minors, seized some shares of bank stock as belonging to them. Opposition alleging a life interest and *grevé de substitution* to the children of the opposant living at the time of her decease. *Held* to be a substitution and not to vest in the children until death of opposant. *Main levée* confirmed. *Chester & Galt*, 4 L. N. 398, S. C. R., 1881.

(1) Moveable property as well as immoveable may be the subject of substitution. Unless corporeal moveables are subjected to a different disposition they must be publicly sold and their price be invested for the purposes of the substitution. Ready money must also be invested in the same manner. The investment must in all cases be made in the name of the substitution. 981 C. C.

## IV. OF MOVEABLE PROPERTY.

143. Before the Code, substitution of moveable property was prohibited. *Joubert & Walsh*, 12 R. L. 334, S. C. 1883.

## V. POWERS OF CURATOR.

144. The curator to a substitution has not the right to demand, in his capacity as curator, the payment of capital, or interest or capital substituted. *Moreau & Dorton*, 12 R. L. 380, S. C. 1883.

## VI. POWERS OF INSTITUTE.

145. Le grevé de substitution peut être autorisé à toucher, sur les capitaux de la substitution, le montant nécessaire pour faire les grosses réparations, s'il n'est pas lui-même en état de faire ces réparations. *McGill & Desrivères*, 12 R. L. 649, S. C. 1884.

## VII. RESILIATION OF.

146. Where a deed of donation creating a substitution was subject to conditions exceeding in value of the property—*Held* that it could be resiliated without the consent of the parties substituted, as a substitution can only be created by gratuitous title. *Beaulieu & Hayward*, 10 Q. L. R. 275, S. C. R. 1884.

## VIII. RIGHTS OF CREDITORS.

147. Where execution was issued on certain property substituted by will—*Held* that properly nothing ever remains suspended, therefore, the creditors of the parties substituted could not seize and sell the property before the opening of the substitution. *Chester & Galt*, 12 R. L. 54, S. C. 1881.

## IX. RIGHTS OF SUBSTITUTE.

148. A substitute has a right to the fruits and revenues of the property substituted from the time of the death of an intermediate party, whose heirs and executors are bound to render an account. *Joubert & Walsh*, 12 R. L. 334, S. C. 1883.

## X. SEIZURE OF SUBSTITUTED PROPERTY.

149. Where moveable property subject to substitution is seized in the hands of the intermediary, at the instance of his creditors, and an opposition is made by the curator to the substitution, claiming distraction of the property, the Court will order that the property be sold, and the proceeds be deposited in Court in the name of the substitution. *Loan & Deposit Co. & Fraser*, 12 R. L. 421, S. C. 1882.

## XI. WHAT IS.

150. In 1827, the appellant entered into a marriage contract, with J. R. B., by which it

was stipulated that she was to receive the sum of £1000, as dower prefix to be taken out of any of their future property. The contract of marriage was subsequently registered and in 1870, the husband died intestate and without children. No heir appearing, the appellant caused a curator to be appointed to the vacant succession and proceeded against him for the amount of her dower under the marriage contract, and having obtained judgment, seized all the property in the possession of her late husband at his decease. The respondents filed opposition alleging that by her will the mother of J. R. B., ordered that all her children with the exception of F. B., were to share equally in her property; but that they were to have the enjoyment and usufruct during their life time, which usufruct was to be *insaisissable*, while the property itself was to go to the heirs respectively of her said children in the same proportions as they would inherit the same by law.—*Held*, that this did not create a legacy of the usufruct and of the *nue propriété*, but was in effect a substitution *fidei commissaire*, in favor of the heirs of the children of the testatrix. *Morasse & Baby*, 7 Q. L. R. 163, Q. B. 1874.

151. But *held* that this substitution not having been registered, was without effect to oppose the rights of third parties, and the appellant could set up the absence of registration in answer to the opposition. *Ibid*.

152. And before the promulgation of the Civil Code, the dowager could take her dower subsidiarily on all the substituted property, in default of other available property of her husband, and in the present case the dowager (the appellant) could take her dower to the exclusion of the heirs, even though the substitution had been validly registered. *Ibid*.

153. But in fact the respondents had not taken upon themselves the quality of heirs of the *grevé*, and were not in a position to claim the property in any case. *Ibid*.

154. To a seizure of certain shares of bank stock, as belonging to the minor children of R. C., deceased, the mother of the children filed opposition on the ground that the stock belonged to her as *grevé de substitution* under her brother's will, which was as follows: "And all the rest, residue and remainder of my property &c. I give, devise and bequeath in trust unto my trusty and esteemed friends, Messrs. W. A. merchant tailor & J. M., merchant grocer, desiring that they will, as speedily as possible, after my death, reduce the same into their possession, and when realized into cash that they shall invest the same in the purchase of real estate or bank or other stocks, as in their judgment may be most advantageous and pay the net annual revenue thereof unto my beloved sister Mary C., wife of the said J. M. G., during her natural lifetime, quarterly or half yearly, as she may require the same upon her own receipt, which I hereby desire to be considered sufficient in the premises, and at her death to divide the capital of my estate be-

tween her children, issue of her marriage with the said J. M. G., share and share alike, to whom I accordingly bequeath the same; but in the event of any of the said children being in minority at the time of their mother's death, I desire that the share or the shares of the minor's shall be retained by my trustees until he, she or they shall have attained majority."—*Held*, that under Art. 928 C. C. (1) this created a substitution and the mother being *grevé* with that substitution had a right to oppose the seizure. *Chester & Galt*, 26 L. C. J. 138, S. C. R., 1881.

155. A bequest in a will of "the use, enjoyment, usufruct and interest" during the lifetime of the legatee, the testatrix gave and bequeathed to her legal heirs then living, to be divided among them, according to law the freehold of all the said property, did not create a substitution, and the legatee was a simple usufructuary, the right of property being in the heirs from the day of the death of the testatrix, and as such usufructuary the legatee was bound to give security even if he were *grevé de substitution*. *Almour & Ramsay*, 26 L. C. J. 228, S. C. 1884.

256. And the fact that one of the plaintiffs was an undischarged insolvent, did not affect his right to bring such action. *Id*.

## SUCCESSION.

- I. ACCEPTANCE OF.
- II. APPLICATION OF LAW WITH REGARD TO.
- III. BENEFIT OF INVENTORY.
- IV. DEBTS OF.
- V. INVENTORY OF.
- VI. LIABILITY OF ASCENDANT DONATEUR.
- VII. LIABILITY OF HEIRS FOR NOTARIAL SERVICES IN CONNECTION WITH.
- VIII. LIABILITY OF LEGATEE.
- IX. RIGHTS OF HEIRS.
- X. SETTLEMENT OF ACCOUNTS OF.
- XI. TO JOINT LEGACY.

### I. ACCEPTANCE OF.

157. A., who had a claim against the insolvent estate of Dr. B., purchased a right of redemption, Dr. B. had at the time of his death in a certain piece of land; and in order that B., *et al.*, [the respondents Dr. B's children] who were perfectly solvent, should accept the succession of Dr. B., A. caused to be prepared a deed of assignment by a notary, of this right of redemption to R. *et al.*, who, a few days after the death of their

(1) A substitution may exist, although the term usufruct be used to express the rights of the Institute. In general the whole tenor of the act, and the intention which it sufficiently expresses are considered, rather than the ordinary acceptation of particular words, in order to determine whether there is substitution or not. 928 C. C.



father, had been induced for a sum of \$50 to consent to exercise this right of redemption. The notary who prepared the deed without the knowledge of B. *et al.*, returned it to A., telling him that he did not like to receive the deed because he believed that in signing it B. *et al.* made themselves heirs of Dr. B., and besides he believed that if B. *et al.* knew that in signing the deed they accepted the succession of their father, and were responsible for his debts, they would not sign. Another notary residing at a distance was sent for by A., to whom he gave the deed as prepared, and the notary then went to the residence of B. *et al.*, read the deed to the parties, and without any explanation whatever passed and executed the deed of cession, whereby B. *et al.* became responsible for the debts of their father. On being informed of the legal effect of their signature, B. *et al.* formally renounced to the succession of their father. There was also evidence that B. *et al.* had done some conservatory acts and acts of administration for their mother, but it was not proved that in any of these transactions they had taken the quality of heirs.—*Held*, that the acceptance of an insolvent succession is null and of no effect when it is the result of deceit and corrupt practices, artifices and fraud. That as A. in this case obtained the signatures of B. *et al.* to the deed in question by fraud, the latter should not be burthened with the debts of their insolvent father. *Ayotte & Boucher*, 6 L. N. 26 & 3 Q. B. R. 123, Q. B. 1882 & 9 S. C. Rep. 460, S. Ct. 1883.

#### II. APPLICATION OF LAW WITH REGARD TO.

158. The 25th February, 1862, the son of the defendant was married, and by the contract of marriage, the defendant gave to the husband a gift of \$200, and also a certain property with the stipulation "*que les dits biens seraient propres au dit futur époux et aux siens de son côté, estoc et ligne.*" Of the marriage was born a daughter, the father died in 1863, and the mother remarried and had several children, half brothers and sisters of the defendant's granddaughter. The latter died 1878, leaving the defendant, her grandfather, and her mother and brothers and sisters. The question was as to the right of the defendant to recover the property given by him to his son on his marriage. If the granddaughter had died before the promulgation of the Code, the defendant would undoubtedly have been entitled to receive back the property in virtue of the stipulation of *propres*, and also if the succession opened since the Code should be governed by the former law. If on the contrary, the succession should be governed by the Code the defendant had no rights. *Held*, that there was no *droit acquis* until the opening of the succession and the law of the Code, therefore applied without question of retroactivity. Judgment for plaintiff confirmed. *Robidoux & Lépine*, 4 L. N. 70, S. C. R. 1880.

#### III. BENEFIT OF INVENTORY.

Article 1323, of the Code of Civil Procedure, is repealed and replaced by the following:

1323. Benefit of Inventory is only granted on condition of rendering an account and paying to such person as may be entitled thereto, whatever monies, may be received, and the beneficiary heir, shall if thereunto required, as provided by Art. 663 of the Civil Code, give security to the amount, and in the manner fixed by the Court or Judge, Q. 48 Vict. Cap. 24.

#### IV. DEBTS OF.

159. A usufructuary by general title is bound to contribute with the proprietor, out of a sum of ready money received from the estate, to pay a debt of the estate which became due after the testator's death. *Les Religieuses de l'Hôtel-Dieu & Nelson*, 7 L. N. 84, S. C. R., 1884.

#### V. INVENTORY OF.

160. Action for an inventory and for an account. Plaintiff was one of the children of defendant by his late wife and as such alleged that he was entitled to a fourteenth of the property belonging to the community which existed between the defendant and his late wife. He also alleged that the defendant never made any inventory of the property belonging to the community, and that although he was appointed and acted as the tutor of the plaintiff, that he never, as such tutor although often requested rendered any account to the plaintiff. The defendant pleaded that in a former action brought against him by another of his children to which the present plaintiff was a party he was condemned to make an inventory, which was done, and a copy of which he produced. He also alleged that he had always been ready and willing to render an account based on such inventory. Plaintiff answered specially that the inventory so made had never been judicially closed and also "*qu'aucune mention y est faite du serment qu'aurait du prêter le défendeur à la fin du dit inventaire qu'il n'avait rien détourné ni enlevé des effets de la dite communauté dont il avait toujours été en possession.*" The special answer also alleged that the defendant and the tutor and sub-tutor of the plaintiff plotted together, in the making of the said inventory, to cheat the plaintiff and deprive him of his property; and further that there were errors and omissions in the inventory to the amount of \$264,214, and the plaintiff in consequence prayed that the defendant's exceptions and the inventory produced with it should be rejected and set aside. *Held*, that the inventory was not null, for want of having been judicially closed, nor by reason of errors and omissions when there is no fraud nor dishonesty of any kind. *Gingras & Gingras*, 7 Q. L. R. 204, S. C., 1881.

## VI. LIABILITY OF ASCENDANT DONATEUR.

161. Confirming judgment S. C. unanimously (*Vide* II. Dig. 714-167) *Corse & Drummond*, 4 L. N. 282, Q. B. 1881.

## VII. LIABILITY OF HEIRS FOR NOTARIAL SERVICES IN CONNECTION WITH.

162. Action by a notary for professional services. It was brought against M. and her husband for services in settling the succession of J. M. There were three of the estate, and they wanted the succession arranged. Action by the notary whom they employed for that purpose. *Held* there was no solidarity of indebtedness between the heirs for the value of such services. *Champeau & Moquin*, 6 L. N. 60, S. C., 1882.

## VIII. LIABILITY OF LEGATEE.

163. A universal donee or legatee in usufruct who has intermeddled with the property of an estate and succession, who has been sued as such jointly with the testamentary executors of such estate, and against whom judgment is rendered in such capacity, becomes personally responsible for the debts of the estate and cannot, under the law as it existed before the code, liberate himself by offering to render an account. *Hudon & Painchaud*, 6 L. N. 109, S. C., 1883.

164. Where by a clause in a will, the executors were directed by the testator to pay all his just debts and were afterwards sued on a mortgage granted by the testator on an immoveable bequeathed to particular legatees, the heirs protested the executors not to pay it but to call in the legatees of the property in question which was done. *Held*, in Supreme Court, reversing the judgment of the Queen's Bench. that the universal legatee was liable, where the burden was not expressly thrown on the particular legatee by the terms of the will. (1) *Harrington & Corse*, 9 S. C. Rep. 412, Su. Ct., 1883.

165. And in another case, *Held*—Que le légataire particulier en l'absence de demande de réduction par les créanciers du testateur, n'est ni tenu, ni obligé au paiement des dettes de celui-ci, pas même de celles dues par hypothèques sur les immeubles à lui légués, et que le légataire universel est seul tenu et obligé au paiement des dites dettes. *Pennison & Pennison*, 9 Q. L. R. 122, Q. B., 1883.

166. Et que le légataire particulier qui paye l'hypothèque grevant l'immeuble qui lui a été légué, est subrogé de plein droit aux droits du créancier qu'il a payé. *Ib.*

(1) A particular legatee who pays a hypothecary debt for which he is not liable, in order to free the immoveable bequeathed to him, has his recourse against those who take the succession, each for his share, with subrogation in the same manner as any other person acquiring under a particular title. 741, C. C.

## IX. RIGHTS OF HEIRS.

167. When several presumptive heirs have been put in possession, on condition of furnishing security, if some of them refuse to furnish security those who do so will be alone placed in possession. *Durocher & Lauzon*, 12. R. L. 403, S. C., 1880.

## X. SETTLEMENT OF ACCOUNTS OF.

168. In the settlement of a succession arising from the death of a father and son within a short time of one another, and the interpretation of various transactions they had with one another, several questions of proof decided. *Prince & Gagnon*, 2 Q. B. R. 74, Q. B., 1881.

## XI. TO JOINT LEGACY.

169. Where a legacy of an immoveable was made to husband and wife, together, by an ascendant of the wife and the wife died shortly after the testator.—*Held*, on action of an uncle of defendant, the husband, that the wife's share belonged to her husband by accession. *Dubois & Boucher*, 9 Q. L. R. 1, S. C., 1883.

## SUFFERING.

I. DAMAGES FOR MENTAL, *see* DAMAGES.

## SUMMARY TRIAL.

## I. JURISDICTION UNDER ACT FOR.

170. The Recorder's Court has no jurisdiction to try a person charged with keeping a disorderly house under the Summary Trial by consent Act. *Lefebvre Ep.*, 7 L. N. 258, Q. B., 1884.

SUMMONS *See*—WRIT OF SUMMONS.

## SUPERINTENDANT.

I. OF PUBLIC INSTRUCTION, *See* COMMON SCHOOLS.

## SUPERIOR COURT.

I. CONSTITUTION OF, *see* Q. 46 VICT., CAP. 13, Q. 47 VICT., CAP. 7 & Q. 48 VICT., CAP. 25.

## SUPER NON DOMINO.

I. SALE BY SHERIFF SET ASIDE AS HAVING BEEN MADE, *see* SALE JUDICIAL.

## SUPER NON POSSIDENTE.

I. OPPOSITION ON GROUND OF, *see* OPPOSITION.

## SUPREME COURT.

I. APPEAL TO, *see* APPEAL.

## SURETYSHIP.

- I. BY MEANS OF PLEDGE.
- II. DISCHARGE OF SURETY.
- III. DISCUSSION.
- IV. EXTENSION OF.
- V. IMPRISONMENT OF JUDICIAL SURETIES.
- VI. JUDICIAL SURETIES.
- VII. LIABILITY OF PRINCIPAL.
- VIII. LIABILITY OF SURETY.
- IX. OF PERSON WHO INTRODUCES ANOTHER.
- X. RIGHTS OF SURETY.
- XI. TERMINATION OF.

## I. BY MEANS OF PLEDGE.

171. The pledge allowed to be deposited in lieu of suretyship, under Art. 1963 of the Civil Code (1) may consist of a hypothec on real property. *Pangman & Pausé*, 27 L. C. J. 147, S. C. 1883.

## II. DISCHARGE OF SURETY.

172. The defendant was *caution solidaire* of one J. B. in favor of the *auteur* of the plaintiff, for the repayment of \$150 secured by hypothec on the property of J. B. the borrower, and action was taken against him for the recovery of the amount and five years' accrued interest. Plea that the plaintiff had not renewed the registration of his hypothec, as required by law, and the property being sold *ex justice* the plaintiff had lost his claim, which otherwise would have been paid. To this, the plaintiff replied specially that the notary had undertaken to attend to the renewal of the registration, but, led into error by the similarity of names, had entered it against the wrong property, and that the defendant was as much in fault, in not attending to the registration, as himself.—*Held* that as the defendant could not be subrogated in the rights of the plaintiff,

(1) When a person cannot find security, he may in lieu thereof deposit some sufficient pledge. 1963 C. C.

through the fault of the latter, that he was discharged and the plaintiff could not recover. *Vezina & Bernier*, 7 Q. L. R. 310, S. C. 1881.

173. The discharge and subrogation of the plaintiff in the rights of a hypothecary creditor, was held to discharge the defendant *caution solidaire* to the mortgage. *Bilodeau & Giroux*, 7 Q. L. R. 73, S. C. 1881.

174. The City Bank accepted a letter of guarantee from two gentlemen who thereby bound themselves jointly, and severally, to and in favor of the said Bank, for the full payment of such notes of two firms, which have been or hereafter may be discounted by the Bank, thereby making themselves and each of them as fully liable and bound for the same, as if each of them had individually made each and every of said notes. Later the City Bank and the Royal Canadian Bank became amalgamated under the name of the Consolidated Bank of Canada, and the new Bank believing itself protected by the letter of guarantee, continued to discount the paper of the firms therein named. The drawers became insolvent as also the gentlemen who signed the letter, and the claim by the Bank was on the estate of one of the signers. This claim respondent contested by saying the letter of guarantee was to the City Bank and not to the Consolidated Bank, and therefore it did not apply. *Held*, that a guarantee given to a Bank which afterwards was amalgamated with another Bank, did not bind the guarantors towards the Consolidated Bank. *Consolidated Bank & Merchants' Bank*, 6 L. N. 284, & 27 L. C. J. 370, Q. B. 1882.

175. "Defendant became security for F F to his creditors, the plaintiffs. The amount of his indebtedness was stated in the *acte de cautionnement* at \$2,278.87, and the different sums due in notes and cheques were all specified. There was also a stipulation in the deed that the liability of the *caution* should be continued to the whole amount, notwithstanding any settlement of accounts or renewals of notes between the creditors and the principal debtor, or any further security they might obtain. *Jugé*:—*Que dans le cas de composition et décharge entre un débiteur et ses créanciers, lorsque l'acte a lieu non pas à raison de l'intention des créanciers de donner au débiteur le montant de ses créances, mais parce qu'ils ne peuvent pas avoir plus, la dette naturelle continuant à exister, la caution solidaire n'est pas déchargée.* *Leclair & Forest*, 7 L. N. 383 & M. L. R. 1 S. C. 113, S. C. R. 1884.

## III. DISCUSSION.

176. A promise or deed of sale or a transfer with warranty, *de fournir et faire valoir* was a guarantee of the present solvency of the debtor, but the transferee can exercise his recourse only after having discussed the property of the debtor and proved his insolvency. *Bédard & Remillard*, 28 L. C. J. 64, S. C., 1880.

## IV. EXTENSION OF.

177. Where a contract has been extended beyond the term fixed, proof of a continued undertaking on the part of a surety must be made by writing or by the oath of the adverse party. *Mansfield & Charrette*, 6 L. N. 106, S. C. R. 1883.

## V. IMPRISONMENT OF JUDICIAL SURETIES.

178. On a demand for the imprisonment of judicial sureties.—*Held*, that the seizure and sale of the defendant's moveables was a sufficient *commandement de payer*, and the rule with regard to four months' notice only applied to tutors and curators in default. *Dupras & Sauvé*, 4 L. N. 299, S. C. 1881.

## VI. JUDICIAL SURETIES.

179. Action on a bail bond given to the Sheriff, and assigned by him to the plaintiff. The defendants when they signed the bond under Art. 828 C. C. P. (1) were bailiffs of the Superior Court. Plea that the bond was null as given in violation of the Rule of Practice No. VI, that the defendant for whom the bail was given was dead and they could not fulfil the bond in consequence, that the proceedings against the said defendant were irregular and they could avail themselves of such irregularities. The plaintiff called in the Sheriff *en garantie*, to defend her against the first exception as to the nullity arising from the Rule of Practice. The Sheriff answered that by C. C. 1938 (2) the defendants could be sureties. *Per Curiam*, I have no hesitation in saying that the answer of the Sheriff should be maintained, and the first exception and the other exceptions are overruled in favor of the plaintiff whose action should be maintained. *Dupras & Sauvé*, 4 L. N. 164, S. C. 1881.

180. In another case the defendants pleaded that plaintiff was without interest, being insolvent; that if they were liable they were liable only as they would have been under Arts. 824. 825 C. C. P.; that there was no order requiring defendant to deliver himself into the hands of the Sheriff; that no such order had been served upon him nor upon the sureties, the defendants in the present case; that the defendant under bail had made a cession

[1] A defendant arrested upon a *capias*, may obtain his provisional discharge, by given good and sufficient sureties to the sheriff, to the satisfaction of the latter, before the return day of the writ, that he will pay the amount of the judgment that may be rendered upon the demand, in principal, interest and costs, if he fails to give bail pursuant to art. 824 or to art. 825. 828 C. C. P.

[2] The debtor who is bound to find a surety must offer one who has the capacity of contracting, who has sufficient property in Lower Canada to answer the obligation, and whose domicile is within the limits of Canada. 1888, C. C.

of his property under Arts. 763 & 766 C. C. P. and until the cession has been set aside by a judgment of the Court, the defendants could not be liable as sureties. Plea overruled, the Court holding that they were liable absolutely. *Duquette & Pattenau*, 4 L. N. 187, S. C., 1881.

## VII. LIABILITY OF PRINCIPAL.

181. A creditor who has obtained for the payment of a judgment debt a guarantee from some of the defendants where they have been condemned jointly, may execute the judgment against the others, without regard to any arrangement between the debtors themselves. *Dominion Type Co. & Pacaud*, 10 Q. L. R. 354, S. C. R., 1884.

## VIII. LIABILITY OF SURETY.

182. Under Art. 1936 C. C., (1) a surety who has not been notified of the proceedings against the principal debtor, is responsible only for the costs of the writ up to return of the action inclusive, and not for any subsequent costs. *Lamy & Drapeau*, 1 Q. B. R. 237 & 7 Q. L. R. 383, Q. B., 1881.

183. But a judgment rendered without fraud against the principal debtor is *chose jugée* against the surety. *Ib.*

184. The surety of an official assignee is not liable for a default committed by the latter after his appointment as assignee by the creditors of the estate. *Dansereau & Letourneur*, 5 L. N. 339, S. C., 1881.

185. The action was against defendants as surety of an official assignee lately deceased. The declaration alleged the insolvency of one P., and the appointment of D., as official assignee to the estate of which he took possession on 11th April, 1876. On the 9th May, 1876, he was appointed assignee for the creditors. On the 15th May, 1879, (three years afterwards) he died being indebted to the estate in the sum of \$364.42. Plea that he was not acting in the character of an official assignee or an employee of the Crown, or public officer in which capacity only the defendants, by their bond, became responsible for his acts. *Held*, (following *Delisle & Letourneur*, (2) that the bond covered the defaults of the official assignee, when acting as assignee for the creditors. *McNichols & Canada Guarantee Co.*, 4 L. N. 78, S. C., 1881, & 6 L. N. 323, Q. B., 1883.

186. Where A. ordered goods to be delivered to A. & T. for the erection of a building on land owned by A., and the credit was given by the vendor to A.—*Held*, that A.

(1) Indefinite suretyship extends to all accessories of the principal obligation, even to the costs of the principal action, and to all costs, subsequent to notice of such action given to the surety. 1936 C. C.

(2) II Dig. 890-154.

might be sued by the vendor for the value of the goods. *Becket & Tobin*, 4 L. N. 219, S. C. R., 1881.

187. *Per curiam*.—Executors were sued and judgment was recovered against them. They appealed from that judgment, and gave as security the present respondent and another person. The terms of the bond are the terms usual in such cases. The condition was that the sureties would pay the condemnation if the executors did not prosecute the appeal, or if the judgment were confirmed. It was not merely that they would pay if there were funds enough in the hands of the executors. The exception of the principal debtor was here purely personal, and the debt still subsists whether they had money enough or not. If sureties were not liable under such circumstances, tutors and others would find it easy to get persons to become sureties for appeals by representing that they would not be liable as there was no money left in the estate. That was not the law. Sureties must be made to know that they undertake to pay the debt if it is not paid by the principal. The Courts in Louisiana had laid down the same doctrine. When a tutor is relieved from paying the costs which he has incurred in good faith, the fact that he is permitted to take the costs out of the estate means this: he may take the costs out of the estate, but the costs must come after the debt. The action of the appellant should therefore be maintained. *Kennedy & Collinson*, Q. B., 1882.

188. Where an attachment before judgment was issued against the goods of one F., and F. desiring to get possession of the thing seized gave the defendants as security that he would produce them when required.—*Held* that the fact that the person seized had disposed of part of the goods before furnishing the sureties did not affect the recourse of the plaintiff against them. *Gauvreau & Quinn*, 10 Q. L. R. 259, S. C., 1884.

189. Under an execution in pursuit of one B against J. B., three lots of land were seized, of two of which J. B. became the purchaser but not having paid the purchase money, B. proceeded to a resale at the *folle enchère* of J. B. who, on the day fixed for the resale, entered into an arrangement with B. in the following terms:—The adjudicataire J. B. promises to pay the balance due by him in this cause within 6 months, to run from the 1st of November, next, by monthly instalments to be of equal amounts if possible, the plaintiff promising not to have more costs incurred against the said J. B., if he fulfils his said en-

gagement and provided that no creditor do intervene in the case; and the three defendants signed the following guarantee: We hereby warrant the plaintiff that he will be fully paid by the said B. and that he will not be disturbed by the order suspending this morning the sale at our request. J. B., not having paid within the delay fixed, B. caused the two properties to be resold at his *folle enchère* and then sued the sureties for the balance. *Held*, that the guarantee given by the sureties was only for the payment to the sheriff of the purchase money of J. B. and on his default for whatever was due to the creditors of J. B. and to himself, the difference between the bid of W. B. and the actual amount for which the property was sold, and that B. had no personal action against the sureties for the amount due by J. B. *Butler & Redmond*, 10 Q. L. R. 337, S. C. R., 1884.

#### IX. OF A PERSON WHO INTRODUCES ANOTHER.

190. An undertaking to give a purchaser an introduction to a firm whose responsibility and standing should be satisfactory to him, meant satisfactory at the date, and did not imply in any way the continued solvency of the firm. *Bowen & Gordon*, 5 L. N. 300, Q. B., 1882.

#### X. RIGHTS OF SURETY.

191. A surety, jointly and severally obliged with the debtor insolvent, cannot rank concurrently with the other creditors for the amount it has had to pay, but only after the others have been paid in full. *Paquet & Canada Guarantee Company*, 4 L. N. 229, S. C., 1881.

192. A person who has been surety for a debtor, without his knowledge, may pay the creditor to obtain subrogation, and issue a writ of *capias* against the debtor without even notifying him of the subrogation. *Evan & Douglass*, 12 R. L. 457, S. C., 1883.

#### XI. TERMINATION OF.

193. Where a debtor gives a promissory note made by a third party as collateral security, for his debt, any interruption of prescription which the debtor may make with regard to the debt, will not affect the prescription of the note, and where the delay for prescription has expired the surety will be discharged. *Perreault & Daigneault*, 12 R. L. 571, S. C., 1883.

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## TARIFF.

- I. OF CABS, *see* CAB TARIFF.  
 II. OF COSTS.

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## TAXATION.

I. A POWER TO LICENCE DOES NOT INCLUDE A POWER TO TAX, *see* MUNICIPAL CORPORATIONS.

II. DIRECT AND INDIRECT.

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IV. OF BILLS OF COSTS, *see* COSTS.

II. DIRECT AND INDIRECT.

1. For a full and elaborate discussion of this question, *see* *Attorney General & Reed*, 26 L. C. J. 331, Q. B., 1882.

## TAXES.

I. ACT RESPECTING TAXES ON COMMERCIAL CORPORATIONS, *see* Q. 45 VIC., CAP. 22.

II. ACT AMENDING, Q. 46 VIC., CAP. 1.

III. LIABILITY OF WIFE FOR, *see* MUNICIPAL CORPORATIONS.

IV. PAYMENT OF TO ENABLE VOTERS TO VOTE AT MUNICIPAL ELECTIONS A CORRUPT PRACTICE UNDER THE MUNICIPAL CODE, *see* MUNICIPAL CORPORATIONS, ELECTION OF COUNCILLORS.

V. PRESCRIPTION OF.

2. A claim for taxes which is made part of the rent by the lease is prescribed by five years. *Owimet & Robillard*, 5 L. N. 8, S. C., 1881.

3. The municipal taxes of the City of Montreal are prescribed only by thirty years. *City of Montreal & Geddes*, 5 L. N. 203, S. C., 1882.

## TEACHERS.

I. ACT RESPECTING PENSION FUND AMENDED, *see* Q. 48 VIC., CAP. 31.

## TELEGRAPH.

I. MEANING OF, C. 45 VIC., CAP. 40.

## TELEGRAPH COMPANIES.

## I. LIABILITY OF.

4. Case of *Bell & Dominion Telegraph Co.*, (II Dig. 721-3) reported *in extenso*, 25 L. C. J. 248, S. C. 1880.

5. Action for damages alleged to have been caused by the non-delivery of a message sent by defendant's line; through the fault and negligence of defendant's agents and servants. Defendants pleaded no negligence, and also the following condition at the head of the message form which plaintiff had signed: "To guard against mistakes the sender of a message should order it to be repeated, that is telegraphed back from its destination to originating office. For repeating one half the original rate is charged in addition. And it is agreed between the sender of the following message and this company, that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message; nor for mistakes or delays in the transmission or delivery, or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case, or delays arising from unavoidable interruptions in the working of their lines, or for errors in cipher, or illegibly written messages." No special proof was made by the plaintiff of negligence on the part of the company, or its servants. *Held*, that the plaintiff was bound by the conditions on the message form which was a contract between him and the company, and not subject to Art. 1676 C. C., (1) and the rules relating to carriers. *Clarence Gold Mining Co. & Montreal Telegraph Co.*, 8 Q. L. R. 94, C. C., 1881.

6. A telegraph company is responsible to the receiver of a telegram for damages caused to him by an error which occurs by the negligence of an employee in the transmission of an unrepeated message, even where the sender of telegram writes it on a blank form on which is printed a condition that the company will not be responsible for mistakes in the transmission of unrepeated messages. *Watson & The Montreal Telegraph Co.*, 5 L. N. 87, C. C. 1882.

II. LIABILITY OF WITH REGARD TO DIVULGING THE CONTENTS OF TELEGRAMS, *see* C. 44 VIC., CAP. 26.

(1) Notice by carriers, of special conditions limiting their liability, is binding only upon persons to whom it is made known; and notwithstanding such notice and the knowledge thereof, carriers are liable whenever it is proved that the damage is caused by their fault or the fault of those for whom they are responsible. 1676 C. C.

## TEMPERANCE.

## I. ACT OF 1864.

7. The petitioner, appellant, prayed for an injunction to order the respondent to desist from carrying out a by-law passed by the Corporation on the 14th March, 1877, under the authority of the Temperance Act of 1864, generally known as the Dunkin Act. Petitioner represented that he was a hotelkeeper and elector of the County, and that the effect of the by-law in question was to prevent him from continuing the sale of spirituous liquor. He urged that the Temperance Act of 1864, under authority of which the by-law was enacted, had ceased to have validity since the passing of the B. N. A. Act, inasmuch as by the latter Act, power was given to the Dominion Parliament alone to regulate trade and commerce, and the Temperance Act of 1864 and the by-law in question were an infringement of the trade and commerce of the country.—*Held* that the Temperance Act of 1864 was kept in force by the B. N. A. Act sec. 129, which enacted: "Except as otherwise provided by the Act, all laws in force in Canada, Nova Scotia or New Brunswick, at the Union, shall continue in Ontario, Quebec, Nova Scotia and New Brunswick, respectively as if the Union had not been made." Further that the Parliament of Canada in passing the Temperance Act of 1878 (41 Vic. cap. 16), specially recognized the Validity of the Temperance Act of 1864. *Noel & Corp. of Co. of Richmond*, 4 L. N. 124, & 1 Q. B. R. 333, Q. B. 1881.

II. LEGISLATIVE POWER WITH REGARD TO, *see* LEGISLATIVE AUTHORITY.

## TENANT.

I. RIGHTS AND DUTIES OF, *see* LESSOR AND LESSEE.

II. WHO IS, *see* ELECTION LAW, QUALIFICATION OF ELECTORS.

TENDER—*See* PAYMENT.

## TERMS.

I. OF COURTS FOR PROOF, AND PROOF AND HEARING, *see* PROCEDURE.

II. PROCEEDINGS IN, *see* PROCEDURE.

TESTAMENTS—*See* WILLS.

TESTAMENTARY EXECUTORS—*See* EXECUTORS.

THEFT—*See* CRIMINAL LAW.

## I. LIABILITY FOR LOSS BY.

8. Action under the provisions of 40 Vict., cap. 22, sec. 36, and 41 Vict., cap. 6, sec. 19, and by the Superintendent of Public Education against the Secretary-Treasurer (respondent) of the School Commissioners for the parish of St. Jean des Chailions, and against his sureties, to recover a sum of \$140 alleged to have been received by the Secretary-Treasurer and not accounted for by him. The evidence showed that the government had transmitted by post for the School Commissioners to the Secretary-Treasurer a cheque on the Montreal Bank, for \$163.51 which he received on the morning of the 11th August, 1878. He immediately attempted to have the cheque cashed, but without success. He then informed the Chairman of the School Commissioners of the receipt of the cheque and of his unavailing attempt to have it cashed, adding that there was a pressing want of money to pay the school mistresses, whose payments were long in arrears. The chairman replied to this communication that it was probable he would go to Quebec the following day in which case he would cash the cheque. Upon the following day the Chairman took the cheque to Quebec and cashed it at the Montreal Bank. Out of the moneys so received, he took \$23.51 due to him by the School Commissioners and put the remaining \$140. in his pocket for them. On the evening of the same day he went to a public meeting held in the Jacques Cartier Hall, in Quebec, where the \$140 were stolen from him. He made an affidavit of the facts and set the police in motion to recover the lost money, but without success. Subsequently the Secretary-Treasurer prepared and submitted to the School Commissioners a detailed statement of the receipt of \$163.51 from the Government, and of this sum entered the loss of \$140; this account so rendered was accepted and approved by the School Commissioners, and a sum which still remained due to the Secretary-Treasurer, was paid to him.—*Held* that there had been neither negligence nor fault on the part of the respondent, and that he was not responsible for the loss. *Ouimet & Verville*, 7 Q. L. R. 34, & 1 Q. B. R. 66, Q. B. 1880.

## THREE RIVERS HARBOR.

I. ACT RESPECTING C. 45 VICT. CAP. 52.

TICKETS—*See* RAILWAYS.

## TIERCE OPPOSITION.

I. CANNOT BE FILED TO A JUDGMENT AGAINST A JOL ADJUDICATAIRE, *see* SALE JUDICIAL.



## TIERS DÉTENTEUR

I. RIGHTS OF FOR IMPROVEMENTS, *see* HYPO-  
THEC.

## TIERS-SAISIE.

I. DECLARATION OF, *see* ATTACHMENT.

## TIMBER.

I. ACT RELATING TO THE CUTTING OF AMEND-  
ED C. 48-49, VICT. CAP. 65.

I. INSPECTION OF

9. An agreement was entered into, by telegrams and letters, between the plaintiff who resided at Chatham, Ont., and the defendants who resided in Quebec, the latter acting as agents for foreigners. The contract was for 500 pieces of first quality oak plank of certain dimensions to be delivered by plaintiff free on board at Quebec. Later an inspection took place at Chatham and a culler was despatched from Quebec for that purpose at the expense of both parties. *Held*, that the inspection in the province of Ontario was only binding on defendants if properly done, and that the contract being a sale of lumber for exportation by sea, fell within section 45 of the Cullers' Act, and that the measurement of such timber at this port being compulsory, no valid delivery could be effected at Quebec, until such measurement had taken place. *Van Allen & Carbray*, 8 Q. L. R. 213, S. C., 1882.

## TIMBER LICENSES

I. ACT CONCERNING, *see* Q. 46 VICT. CAP. 9.

II. RIGHTS UNDER.

III. WARRANTY WITH SALE OF.

II. RIGHTS UNDER.

10. Appellants were settled on several lots of government land. They had paid the price \$858 and were only to pay a sum not then determined, for occupation. No patent or location ticket issued. This was in July, 1870. In December, 1880, respondent obtained a license to cut timber covering these lots. Appellant cut a quantity of timber manufactured into logs, and drew it to the *jetée* where it was seized by respondent. The Court held the seizure good, and condemned the appellants to deliver up the wood or to pay respondent the value of the logs, \$1,249.45. The Court of Appeal maintained the seizure, and condemned appellant to surrender the logs or to pay the value of the lumber not of the

logs, namely, \$310. *See* article 434 and 435, C. C., (1) *Reynor & Thompson*, 5 L. N. 421, Q. B., 1882.

## III. WARRANTY WITH SALE OF.

11. A person sold his right and title to thirteen Crown Timber licenses. He was unable to deliver two of the licenses. To make up the deficiency he assigned two other licenses, representing fifty square miles of limits. The second deed contained a warranty against all disturbance. *Held*, reversing the judgment of the Supreme Court of Canada, (5 L. N. 72,) that the vendor was not liable to make good a title to the limits covered by the thirteen licenses further than the licenses made a title to them, and that the two licenses assigned by the second deed must be taken exactly as the two missing licenses were taken, viz, as conveying only such right, title and interest, as the vendor had obtained from the Crown, and that there was no guarantee against a deficiency by reason of a prior grant. *Ducondo & Dupuy*, 7 L. N. 46 & 28, L. C. J. 85, P. C., 1883.

## TIMBER SLIDES.

I. TOLLS ON, *see* C. 46 VICT., CAP. 16.

## TITHES.

I. DUE BY PAROISSE CANONIQUE.

II. LIABILITY FOR.

I. DUE BY PAROISSE CANONIQUE.

12. Lorsqu'une partie d'une paroisse civile et canonique, par décret de l'Évêque diocésain, est dûment détachée et annexée à une paroisse voisine, la dime est due au curé de cette dernière qui peut la recouvrer en justice, nonobstant que, sur opposition des parties intéressées, les commissaires aient refusé d'ériger civilement cette nouvelle paroisse qui reste paroisse canonique seulement. *Ouimet & Cadotte*, 7 L. N. 415, C. C., 1884.

13. Et la dime est due pour la subsistance du curé à l'occasion des services spirituels qu'il est appelé et tenu de rendre aux fidèles mis par l'évêque sous sa juridiction, et non

(1) If an artisan or any other have made use of any material which did not belong to him to form a thing of a new description whether the material can resume its previous form or not, he, who was the owner of it, has a right to demand the thing so formed on paying the price of workmanship, 434, C. C. If, however, the workmanship be so important that it greatly exceeds the value of material employed it is then considered as the principal part and the workman has a right to retain the thing on paying the price of the material to the proprietor. 435, C. C.

pour les services civils qu'il rend à l'État, et que par suite c'est la paroisse qui doit la dime. *Id.*

## II. LIABILITY FOR.

14. A person who purchases unthreshed grain which is subject to tithes does not become thereby responsible for the payment of tithes, nor by the fact of his threshing and fanning the grain. The responsibility rests on the owner or occupant of the land who harvested the crop. *Gaudin & Ethier*, 6 L. N. 165, C. C. 1883, & 7 L. N. 382, & M. L. R. 1 Q. B. 37, 1884.

## TITLE.

### I. MAY BE ATTACKED INDIRECTLY WHEN NULL.

II. PROOF OF MAY BE ENTERED INTO ON CRIMINAL PROSECUTION FOR CUTTING WOOD.

### I. MAY BE ATTACKED INDIRECTLY WHEN NULL.

15. Where a title is *prima facie* good and valid, it can only be attacked by direct proceeding, but when simulated and fraudulent, can only be set aside on special conclusions to that effect. (1) *Hingston & Larue*, 7 Q. L. R. 301, S. C. R., 1881.

II. PROOF OF MAY BE ENTERED INTO IN A CRIMINAL PROSECUTION FOR CUTTING WOOD.

16. To a prosecution under 32 & 33 Vic., Cap. 22, for having illegally and maliciously cut wood on the property of the complainant, the defendants pleaded "not guilty" on the ground that both they and the plaintiffs, were members of the Huron Tribe of Indians, and they had a right to cut wood on the property in question, but produced no title in support of such pretention. *Held*, that the Court had a right to enter into the proof of property to see if the plea was *bona fide*. *Picard & Grosblouis*, 7 Q. L. R. 131, Q. S., 1881.

## TITRE PRÉCAIRE.

### I. HOLDER OF PROPERTY BY.

17. The holder of property by precarious title has no right to plead the rights of the persons for whom he holds. *Lesage & Prud'homme*, 26 L. C. J. 213, S. C. R., 1882.

## TOLL BRIDGES.

I. POWER OF LEGISLATURE WITH RESPECT TO, *see* LEGISLATIVE AUTHORITY, LIMITS OF.

(1) *See also Laframboise & D'Amour*, II Dig. 183-212.

II. RIGHT OF PROVINCIAL LEGISLATURE TO FORFEIT, *see* LEGISLATIVE AUTHORITY.

## TOLL GATES.

I. RIGHT TO PROCEED AGAINST, *see* INJUNCTION.

## TOOLS.

I. WHEN EXEMPT FROM SEIZURE, *see* EXECUTION.

## TORTS—*See* DAMAGES.

## TOWAGE.

I. MEANING OF "TO GO OUT IN TOW," *see* INSURANCE, CONDITIONS OF POLICY.

## TOWN CORPORATIONS.

I. ACT AMENDING GENERAL CLAUSES ACT, *see* Q. 44-45 VICT., CAP. 28.

## TRADE.

I. REGISTRATION OF MARRIED WOMAN IN, *see* MARRIED WOMEN.

II. RESTRAINT OF, *see* LEGISLATIVE AUTHORITY, MUNICIPAL CORPORATIONS, &c.

## TRADE MARKS.

I. INFRINGEMENT OF.

II. INJUNCTION IN CASES OF.

III. RIGHT TO.

IV. VIOLATION OF.

I. INFRINGEMENT OF.

18. Action of damages for infringement of a trade mark. The plaintiffs who had been in business as manufacturers of soap for upwards of 7 years, were registered owners of a trade mark used to distinguish an article of laundry soap largely manufactured and sold by them. The trade mark consisted of a horse's head placed in the center of the front of the cake of soap, with the words impressed over it "The Imperial Trade Mark" and under it the words "Laundry Bar", with the address of the firm "J. B. & Co., Montreal" on the adverse side. The defendants were also extensive manufacturers of soap, in the same city, for upwards of thirty years. At the request of one

Bonin, a grocer, they manufactured for him a soap somewhat similar in appearance to "B. & Co.'s" soap, but without any proved intention of imitating the latter. Bonin's soap bore the impress of a unicorn's head similarly placed with the words "A. Bonin, 115 St. Dominique St., very best Laundry," on the face of the cake, and there were no words on the obverse side.—*Held* that an imitation of a trade mark is colorable when a careful inspection is necessary to distinguish its marks and appearance from those of the manufacture imitated, but that in the present case there was not sufficient resemblance between the marks and inscriptions to deceive persons of ordinary intelligence, and the defendants could not be restrained from continuing the manufacture of their soap. *Darling & Barsalou*, 25 L. C. J. 31, & 4 L. N. 37, & 1 Q. B. R. 218, Q. B. 1880.

19. Action of damages for infringement of trade mark and to restrain the defendant from further using it.—*Held* that a person who had obtained a trade mark in the United States in 1870, but who did not registered the same in Canada, until after the Act of 1879 (42 Vic. cap. 22) had no action for infringement against a person who had registered the same in Canada in 1876. *Morse & Martin*, 5 L. N. 99, S. C. 1882, & 28 L. C. J. 236, Q. B. 1884.

#### II. INJUNCTION IN CASES OF.

20. Pending an action concerning the right to use a trade mark, the plaintiffs have a right to an interim order to restrain the defendants from using it. *Siebert & Cordingley*, 5 L. N. 131, S. C. 1882.

#### III. RIGHT TO.

21. Case of *Thompson & MacKinnon* (II. Dig. 725-13.) confirmed in appeal, 26 L. C. J. 321 & 5 L. N. 396, Q. B. 1882.

22. Action of damages against a dealer in stoves, for alleged infringement of a trade-mark and industrial design registered as the property of plaintiff. It was in evidence that this trade-mark and design had been copied by plaintiff from and were identical with a stove manufactured by a firm of E. C. & Co.; of Troy, N. Y., and sold throughout the United States of America, plaintiff having procured patterns of the same from E. & Co. that this trade mark and design were applied to stoves, and known and sold in the United States for years previous to the registration in Canada, and plaintiff copied his design and trade mark from the stoves of E. & Co. Further, previous to the registration by plaintiff, defendant had imported from E. & Co. a stove similar in design, and used as a pattern, from which the stoves complained of were made. *Held* that a person who copies the design of an article which has long been manufactured and in use in another county, and registers a trade-mark for the same in Canada, under the Trade Mark and Design Act of 1879, is not entitled to protection. *Glendinning & Euard*, 7 L. N. 43, S. C. 1884.

#### IV. VIOLATION OF.

23. Case of *Kerry & Les Sœurs de l'Asile de la Providence* (II. Dig. 726-15) reported at length 26 L. C. J. 51, Q. B. 1878.

#### TRADER.

##### I. WHO IS.

24. In May 1879, the defendant sold to the plaintiff all the hemlock bark on the South East of lot No. 16, in the second concession of Wickham, to be taken within the twelve months following. In October of the same year, they sold the lot and the bark not having been all taken within the time stipulated.—*Held*, in an action against them for the value that the sale of the bark was a commercial matter and they were jointly and severally liable. *Fee & Sutherland*, 9 Q. L. R. 55, S. C. R. 1882.

25. A farmer selling cordwood from his land is a trader dealing in similar articles within the meaning of Art. 1489 C. C. [1] *Canada Paper Company & British American Land Company*, 5 L. N. 310, Q. B. 1882.

#### TRADITION FEINTE.

##### I. WHAT IS *See* DONATION DELIVERY.

#### TRANSACTION.

##### I. FRAUD IN.

26. Action to set aside a deed of *transaction* by which the plaintiff deisted from a judgment in her favor, and ceded and transferred to the defendant all her rights in the succession of her brother. Plaintiff alleged *crainte*, error and fraud. She contended that she was intimidated by her husband, who was on the point of leaving the country with another woman, into passing this deed with the object on his part of procuring for him the money to run off with the other person, and that the money was not paid to her but to her husband. *Held*, that the allegation that she did not get the money was disproved. She got the money and gave it to her husband, and having done so, she could not have the deed set aside without bringing back all she had received under the terms of the deed. *Charlebois & Charlebois*, 26 L. C. J. 378, Q. B. 1882.

#### TRANSFER.

##### I. BY WIFE ON BEHALF OF HUSBAND.

##### II. IN FRAUD OF CREDITORS.

##### III. NOTICE.

## IV. OF CLAIMS.

## V. PRIVILEGE OF TRANSFEREE OF CLAIM.

## I. BY WIFE ON BEHALF OF HUSBAND.

27. A transfer may be validly made by a wife in payment of her husband's debts and no action will lie to recover. *Gorrie & O'Gilvie*, 4 L. N. 228 S. C. & 5 L. N. 261, S. C. R. 1882.

## II. IN FRAUD OF CREDITORS.

28. Action by respondent, assignee to the Insolvent Estate of B. P. P. to set aside a deed of sale by P. to his daughter as made in contemplation of insolvency. *Held*, that the vendor was insolvent at the time of the sale, and the circumstance that the purchaser was the daughter of the vendor, that she had no apparent means to purchase the property and from her position was not likely to have made savings to pay for it, were a sufficient presumption of fraud, in the absence of any evidence to the contrary to annul the sale. *Page & Evans*, 4 L. N. 130 & 1 Q. B. R. 352, Q. B. 1881.

29. A. sold a certain lot of land to B. and it was agreed that in default of payment of the price, A. might demand the rescission of the deed. B. became insolvent and by knowing the insolvency obtained a retrocession of the land and his price. *Held* that the retrocession under the circumstances must be deemed to be made with intent to defraud, and the contract was avoided. *Prevost & Gosselin*, 5 L. N. 381, S. C. 1882.

## III. NOTICE.

30. Action by appellant, taking the quality of *cessionnaire* of one P. who obtained a sub-contract from respondents to make certain fencing on the line of the North Shore Railroad. The *moyens* of defense of respondents are in effect that appellant is not the *cessionnaire* of P, and that the length of fence constructed was 589 acres, and not 608, as is pretended, and that this sum is fully paid to Payton, or to his legal representatives. The question was as to the notice of transfer if sufficient.—*Held*, on the evidence, reversing the judgment. *Dorion & Dufresne*, 5 L. N. 418, Q. B., 1882.

## IV. OF CLAIMS.

31. Where a person transfers claims with a warranty of the solvency of the debtors a transferee can only exercise his recourse against him after proof of their insolvency. *Bédard & Remillard*, 28 L. C. J. 64, S. C. 1880.

## V. PRIVILEGE OF TRANSFEREE OF CLAIM.

32. Le 4 Mars 1877, l'Intimé a vendu à G. F., et son épouse un immeuble pour la somme de \$16,000 payable à termes avec intérêts. Le 16 avril suivant, (1877,) l'Intimé a

autorisé son fils H., à transporter à l'Appelant, sans garantie une somme de \$250, avec intérêt, à huit pour cent, à prendre sur les premiers intérêts qui seraient dus par H, et sa femme sur le prix compris dans l'acte de vente du 4 mars prochain, cette somme ainsi transportée devant lui être rembourser plus tard par sa femme. Le 18 avril, le transport a été fait à l'Appelant, aux termes de la procuration donnée par l'Intimé à son fils. Et sa femme n'ayant payé, ni capital, ni intérêts, l'immeuble qu'ils avaient acheté a été vendu par le Shérif et l'Intimé en est devenue l'adjudicataire pour la somme de \$6,000. Sur le rapport des derniers devant la Cour, l'appelant a fait une opposition afin de conserver pour les intérêts que l'intimé lui avait transportés, de son côté, l'intimé réclame la balance de son prix de vente. Par le transport de collocation, l'Appelant a été colloqué pour le montant entier de son transport, et l'Intimé a contesté sa collocation, les derniers rapports n'étant pas suffisants pour payer les deux créances.—*Held*, that the transfer without a guarantee did not carry subrogation so as to confer a privilege under Art. 1986 C. C. (1) neither could the transferee claim a preference under Art. 1159 C. C. (2) which applied only where the two claims were in the hands of the same creditor, and that under the circumstances the parties should be collocated concurrently. *Villeneuve & Graham*, 1 Q. B. R. 61, Q. B., 1880.

## TRAVELLERS — See COMMERCIAL TRAVELLERS.

## I. RIGHTS OF ON RAILWAYS See RAILWAYS.

## TREATING.

## I. AT ELECTION See ELECTION LAW.

## TREES—See WOODS &amp; FORESTS.

## TRESPASS— See DOGS.

[1] Persons who are subrogated in the rights of a privileged creditor may exercise his right of preference, such creditor has however a preference for any remainder due him, over subrogated parties to whom he has not guaranteed the payment of the amount for which they have obtained subrogation. 1986 C. C.

[2] A debtor of a debt which bears interest or produces rent, cannot without the consent of the creditor impute any payment which he makes to the discharge of the capital, in preference to arrears of interest or of rent. Any payment made on the capital and interest, but which is not certain, is imputed first upon the interest. 1159 C. C.

## TRIAL—See CRIMINAL LAW.

## I. IN CIVIL CASES See JURY.

## TRINITY HOUSE.

## I. AMENDING ACT C. 45 VICT. CAP. 43.

## TRUSTEE—See ASSIGNEE.

## I. RIGHT OF SURVIVORSHIP.

33. The plaintiff and defendant were co-trustees along with others, of a Presbyterian Church, and in that capacity and before the passing of the Statute of 1875, they, all of them, acquired land for the congregation and built a church. The Union of the Presbyterian Churches raised a dispute as to the right to the property. The plaintiff belonged to the Union party and the defendant to the anti-Union. The plaintiff was described as suing "in his quality of sole surviving and remaining trustee legally appointed and authorized to hold the real estate and representing the civil rights of the religious congregation of Côte St. George, in said county, in connection or communion with and forming part of the Presbyterian Church in Canada, suing in his said quality and on behalf of all the other members of the congregation." In the deed the property was conveyed to the plaintiff and defendant and two others named "*en leur qualité de syndics de la congrégation presbytérienne en connection avec l'Eglise d'Ecosse des dites Côtes St. George, St. Patrice, partie du Township de Newton, attachée, et qui font et feront profession à l'avenir de la dite religion Presbytérienne.*" By Consolidated Statute, Lower Canada, Chap. 19, it is provided that congregations when they wish to acquire lands for churches may "appoint one or more trustees to whom and to whose successors (to be appointed in the manner set forth in the deed of conveyance) the lands necessary for each of the purposes aforesaid may be conveyed, and such trustees and their successors for ever, by the name by which they and the congregation for which they act are designated in such deed may acquire and may institute and defend all actions at law, &c., and the successors of the trustees appointed in the manner provided by a meeting of the congregation held as provided by that Act have the same powers." Held, that the plaintiff had no right of action as surviving trustee. *Morrison & McQuaig*, 4 L. N. 151, S. C., 1881.

## TRUSTS.

## I. ACT AMENDING.

## II. TRANSFER OF PROPERTY HELD IN.

## I. ACT AMENDING.

Section 10 of the Act 42-43 Vic., cap. 24, is amended by striking out in the thirteenth and fourteenth lines the words "valued on the municipal valuation roll at double the amount of the investment," and by substituting in lieu thereof the words "to an amount not exceeding three-fifths of the municipal valuation of such real estate." Section 1 of the Act 42-43 Vict., cap. 30, is amended by striking out in the sixth line the word "permanent," and by adding after the word "debentures," in the sixth and seventh lines the words "or in municipal stock or debentures," and by striking out in the tenth and eleventh lines the words "valued in the municipal valuation roll at double the amount of the investment," and by substituting in lieu thereof the words "to an amount not exceeding three-fifths of the municipal valuation of such real estate." Q. 46 Vict., cap. 24.

## II. TRANSFER OF PROPERTY HELD IN.

34. Where A. entrusted a sum of money to B. to be invested to A.'s benefit, and B. employed the money in the purchase of shares of a certain stock, which he held in his own name "in trust" and subsequently transferred these shares with others belonging to himself, to a bank as collateral security for a personal debt.—Held that A. could not claim the shares nor the value thereof from the Bank; that B.'s admission of the deposit and of A.'s title to the shares did not make proof as against a third party who received them in good faith and in ignorance of the trust and the facts that the words "in trust" appeared after B.'s name in the certificate of stock, without any indication of identification of the owner was not notice to the Bank that B. was dealing with property not his own so as to make the Bank liable (1). *Sweeney & Buchanan*, 5 L. N. 66, S. C. 1881.

35. But held in Supreme Court, overruling this decision and the decision of the Queen's Bench, which confirmed it, that there was sufficient to show that B. was the mandatory of A., and the Bank of Montreal not having shown that B. had authority to pledge or sell the stock, A. was entitled to an account from the Bank. 8 L. N. 403, Su. Ct. 1885.

## TURNPIKE BONDS.

## I. LIABILITY FOR.

36 The Dominion of Canada is not liable for bonds signed by the Turnpike Road Trustees for the improvement of highways as for a debt of the late Province of Canada. *Regina & Belleau*, 7 S. C. Rep. 205, & 5 L. N. 242, Su. Ct. 1882.

(1) Confirmed in Appeal.

## TURNPIKE ROADS.

## I. WIDTH OF.

37. In a petitory action against the defendant for encroachments on a turnpike road, near Quebec, *held* that the width of such road was determined by the Act 36 Geo. III, cap. 7, sec. 6, which established the French foot as the legal measure for all that concerned lands in the seigniories. *Les syndics des chemins à barrière de la rive Nord à Québec & Vézina*, 8 Q. L. R. 281, S. C. 1882.

## TURNPIKE ROAD TRUSTEES.

## I. POWERS OF.

38. In a contestation concerning a piece of road on which, as the plaintiff averred, the defendant had encroached and is still encroaching—*Held* that although they had not the actual property in the roads under their control, which belonged in reality to the Crown, nevertheless the power with which they were entrusted gave them the right to bring a petitory action such as the one in question. *Les Syndics des chemins à barrière de la rive Nord à Québec & Vézina*, 8 Q. L. R. 281, S. C. 1882.

## TUTELLE.

I. A PARENT CANNOT SUE ON BEHALF OF A MINOR CHILD WITHOUT.

39. Where a mother sued for damages alleged to have been caused to her minor child without first being appointed tutrix—*Held* that she had no status. *Wilhelmy & Brisebots*, 6 L. N. 276, & 27 L. C. J. 175, C. C. 1883.

## TUTORS.

## I. ACTION BY.

40. It is not necessary in an action by the tutor, that the names of the children for whom he is acting be set forth in the writ and declaration. *Charbonneau & Charbonneau*, 7 L. N. 96, S. C. 1884.

## TUTORSHIP.

## I. ACCOUNT OF.

## II. ACTION BY TUTOR.

## III. APPOINTMENT OF TUTOR.

## IV. EVIDENCE OF TUTOR.

## V. FAMILY COUNCIL.

## VI. LIABILITY OF TUTOR FOR NON REGISTRATION OF WILL.

## VII. REMOVAL OF TUTORS.

## I. ACCOUNT OF.

41. Minors become major, cannot complain of the administration of the tutor if, since their majority, they have accepted his account and given him a discharge. *Banque Jacques-Cartier & Pinsonnault*, 7 L. N. 359, & M. L. R. 1, S. C. 1884.

## II. ACTION BY TUTOR.

42. This case came up on the merits of an exception to be form. The plaintiff sued in his quality of tutor to the minor children issue of his marriage with the late Dame Mathilde Desjardins. The defendant filed an exception to the form, on the ground that the writ and declaration did not contain the names and first names of the children for whom the tutor was acting. The court was of opinion that the description of the plaintiff was a sufficient compliance with Art. 19 of the Code of Procedure, which says that tutors plead in their own name in their qualities. The exception was, therefore, dismissed. *Charbonneau & Charbonneau*, S. C., 1882.

43. A mother cannot sue in her quality of natural tutrix for personal damages caused to her son, a minor. *Wilhelmy & Brisebots*, 12 R. L. 124 C. C. 1883.

## III. APPOINTMENT OF TUTOR.

44. In special cases, a mother, even during the life of her husband, may be appointed tutrix to her infant child. *Deltale Exp.* 7 L. N. 121, S. C. 1884.

IV. EVIDENCE OF TUTOR *See EVIDENCE.*

45. A tutor suing in his name *es qualité* is competent as a witness in the case. *Thompson & Pelletier*, 7 Q. L. R. 59, S. C. 1881.

## V. FAMILY COUNCIL.

46. The composition of a family council, in part made up of strangers, and the appointment of a stranger as tutor, are not absolute causes of nullity but only relative, and can only be invoked when done fraudulently and to the injury of the minors. *Banque Jacques-Cartier & Pinsonnault*, 7 L. N. 359, S. C. 1884.

## VI. LIABILITY OF TUTOR FOR NON REGISTRATION OF WILL.

47. Respondent called to the substitution created by the will of her father claimed from appellant by petitory action an immoveable belonging to the substitution. Defendant pleaded that he had acquired the immoveable at a judicial sale, at the suit of a creditor, whose claim was preferable to the substitution which was in consequence purged by the adjudication. Respondent answered that if the claim in question was preferable to the substitution, it was so in consequence of the delay which had been allowed to elapse before

registration of the will, for which delay appellant, who was her tutor was responsible.—*Held* that the proof was on respondent to show that appellant was aware of the existence of the will, and as she had not done so, action dismissed. *Terrien & Labonté*, 2 Q. B. R. 90 & 94, Q. B. 1881.

#### VII. REMOVAL OF TUTORS.

48. The petitioner, who was the sub-tutor, presented a petition to the Judge in Chambers, who gave an order summoning the

tutrix to appear on Friday, the 22nd February instant, in the Superior Court. The defendant appeared and made a preliminary objection to answer, there being no writ issued against her, summoning her to appear.—*Held* that, since the Code, the proceedings must be by writ. *Daoust & Lebœuf*, 7 L. N. 69, S. C. 1884.

49. When a tutor is absent, another tutor may be appointed, on production of affidavit establishing the absence, and such will be considered sufficient without any further legal proceedings being necessary. *Marcel Exp.*, 12 R. L. 644, S. C. 1884.

## U

## SUMMARY OF TITLES

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## ULTRA VIRES.

## I. WHAT IS.

1. Action to set aside a deed of lease entered into between respondents and the auteur of the appellants. The respondents, a building society, purchased from the auteur of the appellants, certain immoveable property situated in Montreal for \$2,200, and the same day leased for twelve years to the vendors for \$4,356.80, payable in 154 payments. This lease being transferred to appellants, they sought to have it set aside on the ground that the Building society had no right to purchase the property, that the acquisition was *ultra vires*, that the payments to respondents consequently illegal, and the appellants could not safely continue to make them.—*Held* that under the terms of C. S. L. C. cap. 69, sec. 10 (1) that the purchase was quite within the powers of the society, and judgment confirmed. *Lareau & La Société Permanente de Construction Jacques Cartier*, 4 L. N. 363, Q. B. 1881.

2. The plaintiff, a building society, had advanced money, and in renewal of the loan and security therefore, had discounted the note on which it sued. The action was contested on the ground that the society had no power to discount notes. The plaintiff relied upon the Act of Quebec, 36 Vic. cap. 78, permitting the Society to invest its surplus funds *intus*

(1) Every such Society shall by one or more of its said rules declare all and every the interests and purposes for which such society is established; and shall also in and by such rules direct all and every the uses and purposes to which the money from time to time to be subscribed, paid or given to or for the use and benefit of the said society or arising therefrom, or in anywise belonging to the Society, shall be appropriated and applied; and in what shares and proportions and under what circumstances any member of such Society, or other person, shall become entitled to the same, or any part thereof; But the application of such money shall not in anywise be repugnant to the uses, interests or purposes of such Society or any of them to be declared as aforesaid; and all rules during their continuance shall be complied with and enforced; and no such moneys as aforesaid shall be diverted or misapplied either by the directors or the treasurer, or any other officer or member of the Society interested therein under such penalty or forfeiture as the Society may, by any rule, inflict for such offense. C. S. L. C. Cap. 69, sec. 4.

Any such society may take and hold any real estate or securities thereon *bona fide* mortgaged assigned or hypothecated to the said Society, either to secure the payment of the shares subscribed by its members, or to secure the payment of any loans or advances made by or debts due to such Society, and may also proceed on such mortgages, assignments or other securities for the recovery of the moneys thereby secured either at law, or in equity or otherwise; and such society may invest in the names of the President and Treasurer for the time being any of its surplus funds in the stock of any of the chartered banks or other public securities of the Province and dividends interests and proceeds arising therefrom shall be brought to account and applied to and for the uses of the society according to the rules thereof. *Ibid.* sec 10.

*alias* in lands, to persons whether shareholders or not, and on any security personal or real, which may be deemed sufficient by the Directors of the Society.—*Held*, reversing the judgment of the Court below, that discounting notes was not engaging in banking, and was within the powers so conferred. *La Société Permanente District d'Iberville & Rossier*, 4 L. N. 269, S. C. R. 1881.

3. To an action for calls on stock by the liquidators of an Insurance Company, in liquidation, the defendant pleaded that he had subscribed for 80 shares of the stock of the said company, on which he had paid 10 per cent, cash. That subsequently at a meeting of the shareholders, duly called for that purpose, it was decided in the interest of the Company, to authorize the managing director to reduce the capital from a million to two hundred and fifty thousand dollars, by accepting a payment of fifteen per cent on the shares, and exchanging them with the shareholders for one quarter the number of shares fully paid up. That defendant agreed to this arrangement and after paying up 15 per cent of his shares, making twenty five per cent paid in all, he received from the Managing Director twenty paid up shares for the eight shares previously held by him; that he did this in good faith and in pursuance of the resolution of the shareholders authorizing it. The evidence of the liquidators went to show that if the arrangement had been fully carried out it would have realized a sum sufficient to pay all the liabilities of the company. *Held*, that the company, without being specially authorized, could not reduce its capital nor purchase, nor accept a surrender of its shares, and the transaction was therefore *ultra vires* and void. *Ross & Fiset*, 8 Q. L. R. 251, S. C. 1882.

4. The defendant was the holder of 70 shares in the capital stock of the Canada Agricultural Insurance Company. The capital stock of the Company was, \$1,000,000, of which at the time defendant subscribed for his stock, 10 per cent. had been paid up. In February, 1877, the Directors made a subsequent call of 10 per cent. but the Company being in difficulties it was resolved to apply to Parliament for an act to reduce their capital stock to \$250,000. As this would take some time a resolution was passed that any shareholder, having already paid 10 per cent. upon his stock, should have the option of paying 15 per cent more, and might then transfer the stock for which he had subscribed to the managing Director, who would transfer to the stockholder one fourth of the amount of stock, the same being fully paid up. Money was raised sufficient to pay up a certain amount of stock which was placed in the hands of the Managing Director for this purpose, and nearly one half of the Capital Stock of the Company was reduced in consequence. The plaintiffs were appointed Assignees of the Company under Chap. 38, 41 Vic. Canada, and proceeded to notify the



committed stockholders, that they would not recognize the transfer so made. *Held*, that a transfer of shares from a stockholder in a Joint Stock Company, which is made with the object and has the effect of reducing the Capital Stock of the Company, is null, and all resolutions of the Company and of the Directors, authorizing such transfer, is illegal and *ultra vires*. *Ross & Worthington*, 5 L. N. 140, S. C., 1882.

## UNINCORPORATED COMPANIES.

### PROCEEDINGS AGAINST.

5. Petition under Art. 997 C. C. P. (1) to restrain defendants from acting illegally as a corporation under the name of the Silver Plume Mining Company. Plea that defendants were a private association and never held themselves out as a corporation to the knowledge of the relator. The proof was that they were regularly organized as a company. The capital was set down as a million divided into 10,000 shares, one of the defendants was President, another Vice President, another Secretary and others Directors; under the constitution and by-laws the stock was to be issued to a trustee who was to sign all transfers and certificates to shareholders; by Art. 1 of the constitution, the Company was to be a corporation, and by Art. 7 it was to have a corporate seal. Certificates were issued with the corporate seal showing the number of shares which each represented. *Per Curiam*.—The Court has no difficulty in deciding this case. The constitution of the Company shows it to be a corporation. It has a corporate seal. It has a board of directors with power to make by-laws. All these circumstances shew that the defendants have assumed to act as a corporation and under the Art. in question was clearly illegal, and the conclusions of the Attorney General should be granted. (1) *Attorney General & Dorion*, 4 L. N. 108, S. C. 1881.

(1) In the following cases; whenever any association or number of persons acts as a corporation without being legally incorporated or recognized; whenever any corporation, public body or board, violates any of the provisions of the acts by which it is governed or becomes liable to a forfeiture of its rights, or does or omits to do acts, the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises, or exercises any power, franchise or privilege which does not belong to it, or is not conferred upon it by law: It is the duty of Her Majesty's Attorney General for Lower Canada to prosecute under Her Majesty's name such violation of the law, whenever he has good reason to believe that such facts can be established by proof in any case of public and general interest, but he is not bound to do so in any other case unless sufficient security is given to indemnify the government against all costs to be incurred upon such proceedings.

## UNDUE INFLUENCE—See ELECTION LAW.

## USAGE OF TRADE—See CUSTOM OF TRADE.

## UNIVERSAL LEGATEE—See LEGATEE.

## USE AND HABITATION.

### I. RIGHT OF SUBJECT TO SEIZURE.

6. The defendant and his wife, in August 1867, sold to one M., a lot of land on which they lived, situated at *L'Ange Gardien*. The sale was made subject to the condition of allowing the vendors to continue using the land, the house, garden and orchard, the out-houses, barns and stables, to take all the wood they required for a single fire, and the pasture of one cow. The vendors continuing thus in possession were to keep the fence in good order, and were not to sell or dispose of the right of possession which they retained without the consent in writing of the purchaser. Another stipulation was that if they left the house and resided elsewhere they would lose all the rights they had reserved. The plaintiff having obtained judgment against the defendant for \$46, and costs seized these rights. The purchaser filed opposition on the ground, that the rights could not be sold without his consent, but afterwards withdrew it, and the defendant filed opposition on the ground, that the rights of use and habitation thus reserved by him were *insaisissable*. *Held* that the rights in question were real rights and having been made transferable with the consent of the proprietor were not exempt from seizure, and the seizure could only be opposed by the *nu-propritaire*. *Goulet & Gagnon*, 8 Q. L. R. 208 S. C. R. 1882.

## USUFRUCT.

- I. ACTION BY USUFRUCTUARY.
- II. EXEMPTION OF.
- III. LIABILITIES OF USUFRUCTUARY.
- IV. RIGHTS OF OWNER.

### 65. ACTION BY USUFRUCTUARY.

7. The plaintiff was the wife of one M. S. who died the 30th December, 1875, leaving a will by which he constituted the plaintiff legatee in usufruct of all his property, if his son Thomas, then in the United States, to whom he bequeathed the property did not claim it.

The son did not claim it and the plaintiff who was testamentary executrix took possession of the property including a claim of \$700, balance of the price of sale of an immoveable which had belonged to her late husband. The plaintiff sued for this balance in her quality of testamentary executrix and universal legatee in usufruct. Plea that the plaintiff had no right of action, neither as executrix nor as usufructuary legatee, and that she had no right to the enjoyment of the usufruct nor to institute action on behalf of it without first having made an inventory. *Held*, under Art. 463 of the Civil Code (1) that a usufructuary, either that she is in possession of her usufruct or that she has made an inventory, cannot by action collect and so enjoy the debts due to the estate.

(1) The usufructuary takes the things in the condition in which they are ; but he can only enter into the enjoyment of them, after having caused an inventory of the moveable property and a statement of the immoveables, subject to his right to be drawn up, in the presence of or after due notice given to the proprietor, unless he is dispensed from doing so by the act constituting the usufruct. 468 C. C.

*Abercromby & Chabot*, 7 Q. L. R., 371, S. C. R. 1881.

## II. EXEMPTION OF

8. The usufruct of moveable property, though declared by the testator to be inalienable, non assignable and not seisable, may be seized in execution of a judgment of separation de corps, condemning the husband to pay to his wife an alimentary allowance. *McGuire & Huot*, 5 L. N. 374, S. C., 1882.

## III. LIABILITIES OF USUFRUCTUARY.

9. The by-law of the City of Quebec concerning the removal of snow, does not bind an usufructuary. *Corporation de Québec & Fenner*, 9 Q. L. R. 247, R. C., 1883.

## IV. RIGHTS OF OWNER.

10. The owner of a property, the usufruct of which belongs to another, may sell or transfer the ownership before the death of the usufructuary. *Labelle & Villeneuve*, 28 L. C. J. 254, C. C., 1872.

# V

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## VACANT SUCCESSIONS.

## I. POWERS OF CURATOR.

1835. "He may sell the immoveables and shares, or stock in manufacturing or financial associations, by following the formalities established by law for voluntary licitations upon the advice of the parties interested, present at a meeting convened for that purpose, in the manner prescribed by the Judge. Such sale as respects immoveables cannot be had, except with the consent of the hypothecary creditors." Q. 48 Vict., cap. 20, sec. 14.

## VACATION—See TERMS OF COURT.

## VAGRANCY.

## I. ARREST FOR.

1. An arrest under the Vagrant Act cannot be made without warrant, after an interval of time following the offense, and where such unauthorized arrest was made, the city was held liable in damages. *Walker & City of Montreal*, 4 L. N. 215, S. C., 1881.

## II. IMPRISONMENT.

2. On an application for a writ of *habeas corpus*.—*Held*, that the general rule, that the period of imprisonment in pursuance of any sentence commences on and from the day of passing such sentence does not suffer exception where the defendant is allowed to go at large after sentence without bail, and therefore where a defendant was allowed to go at large until the term of the sentence had expired her commitment subsequently was held to be illegal. *Gervais Exp.*, 6 L. N. 116, Q. B., 1883.

3. In a similar case the commitment was held good as the term had not expired when it was made. *Henault Exp.*, 6 L. N. 121, Q. B., 1883.

## III. WHO ARE.

4. The Art. 32-33, Cap. 28, (Can. providing for the punishment of vagrants), does not apply to the case of a person using insulting language to a passer by, from the window of his residence. *Poulin & Marcil*, 5 L. N. 356, S. C., 1882.

## VALUATION ROLL—See MUNICIPAL CORPORATIONS.

## VARIANCE.

I. BETWEEN INDICTMENT AND CONVICTION, see CRIMINAL LAW.

## VENDITIONI EXPONAS.

## I. WHEN ALLOWED, see EXECUTION.

## VENDORS AND PURCHASERS—See SALE.

## VENTE JUDICIAIRE—See SALE.

## VENTILATION.

I. NECESSARY TO DECIDE THE VALUE OF IMPROVEMENTS, see HYPOTHEC.

## VENUE.

## I. IN CIVIL CASES.

## II. IN CRIMINAL CASES.

## I IN CIVIL CASES.

5. In the case of a notarial obligation executed at Montreal.—*Held*, that the right of action for the recovery of the debt due there—under originated at Montreal and not at the place where demand of payment had to be made. *Duchemay & LaRocque*, 25 L. C. J. 228, S. C. R., 1880.

6. Declinatory exception on the ground that the contract of hiring was not made, as alleged, in this Province, but in the Province of Ontario, and that the service, which was a personal service in Montreal, did not bring the defendant before the Court so as to give it jurisdiction. The defendant relied on *Gosset & Robin* (1). *Per curiam* "*Gosset & Robin* was an action *pro socio* where the service depended upon the domicile of the party, and it was pretended that in such a case as that, were the action was not purely personal, as it is here, that the defendants being absentees and having their principal place of business in Jersey, where their property might have been liable to division under the judgment of the Court, could be called in by advertisement, because they had property in Gaspé. Such a case as that is of course clearly distinguishable from this. Here the action is purely personal, as required by Art. 34 of the Code of Procedure, not mixed as it was there, and in the terms of the judgment in that case leave no doubt of the ground upon which it rested. A personal action, however, follows the person, and a personal service in Montreal in such a case gives us, under Art. 34, jurisdiction over it." *Lafrance & Jackson*, 4 L. N. 60, S. C., 1881.

7. Action for assessments in a Mutual Insurance Co. In August, 1878, the defendant

who resided in Beauport, in the District of Quebec, made application to the Company plaintiff, whose head office is at Montreal, to be admitted a member. Defendant also sent a deposit note and undertook to pay such assessments as might be made. The application was accepted and policy issued. On being sued at Montreal, defendant declined the jurisdiction. Exception dismissed. (1) *The Mutual Fire Insurance Co. of Joliette & Desrousselles*, 4 L. N. 220, S. C., 1881.

7. To give a right of action in a district other than that in which the defendant has his domicile, everything which constitutes the right of action must have taken place in such district, and several actions or causes of action belonging to different districts cannot be joined in order to bring the defendant from the jurisdiction of his domicile. *Arthabaska & Bolduc*, 2 Q. B. R. 110, Q. B., & *Faucher & Brown*, 2 Q. B. R. 168, Q. B., 1881.

8. The defendant, domiciled at Three Rivers, was summoned to Arthabaska as a witness in a case there pending between him and the plaintiff, and while in the last mentioned district, was served with process of summons *ad res* commanding him to appear before the Court there to answer the suit of the plaintiff on a cause of action which arose in the district of Three Rivers. He declined the jurisdiction, but his declinatory plea was rejected, on motion, for informality in his appearance, and judgment was rendered against him by default. The defendant then filed an opposition to judgment, repeating in substance among other matters his plea to the jurisdiction. He had previously obtained leave to appeal from the interlocutory judgment dismissing his declinatory exception, but, not proceeding with such appeal was forfeited. *Held*, reversing the judgment of the Superior Court that a witness coming into a district in which he is not domiciled in obedience to a writ of subpoena, may, in the absence of fraud or bad faith, be validly served with a summons *ad res* to appear before the Court of that district. *Bruneau & McCaffrey*, 7 Q. L. R. 364 & 1 Q. B. R. 313, Q. B., 1881.

9. Appellants, merchants, doing business at Montreal, brought suit in the Superior Court there for recovery of \$197.88 as the price and value of goods sold and delivered to respondent, a trader, doing business at Ile Verte, in the district of Kamouraska. The sale was made thro' a commercial traveller who visited defendant at Ile Verte and there took an order for the goods in question which was forwarded by him to his principals at Montreal, who accepting it, thus filled the order and shipped the goods to respondent by the carriers chosen by him and according to his orders. *Held* that the right of action

(1) This question is settled as far as Mutual Insurance Cos. are concerned by Act of Quebec, 34 Vict., cap. 16, sec. 4, curiously enough not referred to in the report, though passed long previously. Ed.

arose where the order was taken. *Gault & Bertrand*, 25 L. C. J. 340, Q. B., 1881.

10. Where a sale of goods takes place in one district, and a written agreement is entered into in another district, setting forth such sale, but dated in the district where the sale actually took place, a right of action arises in the latter district. *Riopelle & Fleury*, 12 R. L. 85, S. C., 1883.

11. Where a person in Arthabaska sold goods for a firm of millers in Ontario, at his own risk and without any commission other than what he could make over and above the mill price, and on the arrival of the goods they were refused on account of the terms of payment being more onerous than contracted for, and the purchaser brought action in Arthabaska for the breach against the millers in Ontario. *Held* that the action should have been dismissed on declinatory exception. *Tourigny & Wheeler*, 9 Q. L. R. 198, S. C. R., 1883.

12. Where the action is for damages for failure to perform a contract, the debtor may be sued at the place where the contract is made, though the failure to perform occurred in another district. *Quebec Steamship Co. & Morgan*, 6 L. N. 324, Q. B. 1883.

13. Action issued in the district of Quebec and served on the defendant at his domicile in the district of Aylmer. Defendant filed an exception *déclinatoire* setting up that the whole cause of action did not arise at Quebec. The original contract, which was for advances to get out timber, was made at Quebec. It being found advantageous to sell the timber in England the parties subsequently agreed that the plaintiff should send the timber there to be sold, the plaintiff paying the expenses at Quebec and in England. Exception dismissed and leave to appeal refused. *Conroy & Ross*, 6 L. N. 154, Q. B., 1883.

## II. IN CRIMINAL CASES.

14. The prisoner was convicted at Quebec of manslaughter. He, and the deceased, were serving on board a British ship and the latter died in the district of Kamouraska, where the ship was loading, from injuries inflicted by the former on board the ship on the high seas. *Held* (on a reserved case) that as the deceased had been hurt upon the sea, and the death happened in another district he should have been tried there, and not in the district of Quebec, and the conviction was wrong. *Regina & Moore*, 8 Q. L. R. 9 & 11 R. L. 180, Q. B. 1881.

## VERDICT.

### I. IN CIVIL CASES.

### II. IN CRIMINAL CASES.

### I. IN CIVIL CASES.

15. In an action of damages for injuries received by being struck by a locomotive the

jury awarded \$5,000, which the court of Review set aside on the ground of contributory negligence. *Held* reversing this judgment that where the verdict of the jury is supported by evidence, although such evidence be in some respects contradicted by other testimony, the verdict of the jury based on their appreciation of the evidence will not usually be disturbed. *Wilson & The Grand Trunk Railway Company*, 5 L. N. 88, Q. B. 1882, and Su. Ct., 1883.

## II. IN COMMERCIAL CASES.

16. On a charge of burglary only, the prisoner cannot be convicted of receiving stolen goods, and a verdict under such circumstances will be quashed on writ of error. *Laurent & Regina*, 1 Q. B. R. 302, Q. B. 1881.

17. The prisoners were indicted for assault with intent to rob. The jury found a verdict of assault. A motion in arrest of judgment on the part of the prisoners on the ground that under the indictment they could not be convicted of common assault was rejected and they were sentenced to three months' goal at hard labor. *Regina & O'Neil*, 8 Q. L. R. 3, Q. B. 1381.

## VESSELS.

I. LIABILITY OF FOR WHARFAGE, *see* HARBOR DUES.

VICE REDHIBITOIRE—*See* ACTION REDHIBITORY, SALE WARRANTY.

## VIOLENCE.

I. TAKING POSSESSION BY, *see* ACTION EN RÉINTÉGRANDE.

VOL—*See* CRIMINAL LAW, THEFT.

## VOLUNTEERS.

I. RIGHTS OF, *see* MILITIA LAW.

## VOTING.

I. AT MEETING OF SHAREHOLDERS, *see* JOINT STOCK COMPANIES.

II. AT MUNICIPAL ELECTIONS, *see* MUNICIPAL CORPORATIONS.

## W

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## WAGES.

I. ACTIONS BY SAILORS FOR, *see* MERCHANT SHIPPING.

II. OF LABORERS EXEMPT FROM SEIZURE FOR ONE HALF, *see* EXECUTION, EXEMPTION.

III. PAYABLE IN ADVANCE CANNOT BE SEIZED.

1. When an employer has contracted with his workman to pay his wages in advance, a seizure made at two p. m on the day on which the wages are payable under the agreement is inoperative. *Geddes & Doudiet*, 5 L. N., 153 S. C., 1882.

## WAIVER.

## I. WHAT IS.

2. Where action was brought for a month's rent under a notarial lease which provided that the rent should be paid to the lessor "at his residence," and proof was made that notwithstanding the provision of the lease, just cited, the lessor had been in the habit of calling on the lessee every month and demanding the rent.—*Held*, on the authority of a judgment of the *Cour de Cassation*, France, that this was a waiver of the provision of the lease & that a demand should have been made before bringing the action. *Simpson & Pinsonnauld*, C. C., 1883.

WARDENS, — *See* CHURCH WARDENS.

## WAREHOUSEMEN.

## I. WHO ARE.

3. The Bank, appellant, held two warehouse receipts granted by the insolvent to the Mechanics' Bank, and transferred to appellants. The validity of one of these receipts was contested on the ground that it appeared that the receipt was given by the insolvent and that he was not a warehouseman, and could not give such a receipt and keep possession of the goods. *Held*, that by the Statute 34 Vict., cap. 5 Sec. 48 (1) the owner of goods giving a

[1] Where any person engaged in the calling of coalkeeper, keeper of a wharf, yard, harbor or other place, warehouseman, miller, wharfinger, master of a vessel, or carrier, curer or packer of pork, or dealer in wool, by whom a receipt or bill of lading must be given in such capacity as herein before mentioned, for cereal grains, goods, wares or merchandize, any such receipt or bill of lading, or any acknowledgement or certificate intended to answer the purpose of such receipt or bill of lading made by such person, shall be as valid and effectual for the purposes of this Act, as if the person making such receipt, acknowledgement, or certificate, or bill of lading, and the owner or person entitled to receive such cereal grains, goods, wares, or merchandize were not one and the same person, and in the case of the curing and packing of pork a receipt for hogs, shall apply to the pork made from such hogs. C. 34 Vic. Cap. 5, Sec. 48.

warehouse receipt to a warehouseman is put in the same position as any other warehouseman so doing, and that under sec. 5, the bank does not forfeit its right of pledge by not selling the goods within six months. *Molson's Bank & Lanaud*. 2 Q. B. R. 182, & 5 L. N. 263, Q. B. 1881.

### WARRANT.

- I. ARREST WITHOUT, *see* ARREST.

### WARRANTY.

- I. WITH SALE OF TIMBER LICENSES, *see* TIMBER.

### WATER COURSES.

- I. OBSTRUCTION OF *see* SERVITUDES.

### WEIGHTS AND MEASURES.

- I. ACT RESPECTING AMENDED, *see* C. 47 VICT., CAP. 36, C. 48-49 VICT., CAP. 64.  
II. FIREWOOD.  
III. MEASUREMENT OF STONE.  
IV. TOISE.

#### II. FIREWOOD.

4. In a contestation as to the quantity of firewood delivered by the plaintiff to the defendants.—*Held*, that the English foot by the weights and measures' Act is the standard for measuring the cord, in the absence of any agreement. *Canadian Copper & Sulphur Co., & Marion Co.*, 4 L. N. 356, S. C. R., 1881.

#### III. MEASUREMENT OF STONE.

5. The question was whether the measurement of the macadam or stone should be before or after it was broken. *Held*, that although the general practice was to measure it after it was broken, yet the circumstances might lead to a different inference, and as the only reliable measurement in this case was made before the stone was broken, and the matter was determined in favor of that measurement by the inspector named under the terms of the contract, on value of the work, the contractor agreed by that measurement. *La Cie du Chemin macadamisé & Rac*, 7 L. N. 307, Q. B., 1884.

#### IV. TOISE.

6. In an action for a balance due on con-

tract to deliver stone.—*Held*, that the *toise* was a French measure and contained 261½ cubic feet. *Trudeau & The South Eastern Railway Co.*, 5 L. N. 203, S. C., 1882.

### WHARFAGE.

- I. RIGHT TO, *see* HARBOR DUES.

### WIFE.

I. CONTRACTS BY ON BEHALF OF HUSBAND, *see* MARRIAGE CONTRACTS, TRANSFER.

II. RIGHTS OF UNDER MARRIAGE CONTRACT EXCLUDING COMMUNITY, *see* MARRIAGE CONTRACTS.

### WILLS.

- I. CAPACITY OF TESTATOR.  
II. ERROR IN NAME OF LEGATEE.  
III. EVIDENCE CONCERNING.  
IV. EVIDENCE OF SANITY OF TESTATOR.  
V. EXECUTION OF.  
VI. FORM OF.  
VII. INTERPRETATION OF.  
VIII. LIABILITY OF LEGATEE.  
IX. PROHIBITION TO ALIENATE.  
X. PROOF OF.  
XI. REGISTRATION OF.  
XII. REPRESENTATION.  
XIII. REVOCATION OF.

#### I. CAPACITY OF TESTATOR.

7. In an action by the plaintiff, as legatee, against the heirs of the late B. S., to recover the amount of the legacy and which the defendants contested, it appeared that the testatrix lived in a solitary way, her surroundings being indicative of extreme poverty, although she was at the time possessed of considerable means. While she was eccentric in many respects, her faculties were nevertheless sufficiently clear to enable her to manage her own affairs up to the time of her death. She had no relation nearer than nephews from whom she had been estranged. She left the half of her estate to a university, in pursuance of a preconceived intention to devote it to charitable purposes, and it was proved that she clearly understood what she was doing and the use to which the legacy was to be applied.—*Held*, that under the circumstances mere eccentricity of conduct, not indicative of permanent mental disorder, would not invalidate the will. *Royal Institution for the advancement of learning & Scott*, 26 L. C. J. 247, & 5 L. N. 375 S. C., 1882.

8. P. L., executor under the will of the late W. R. sued W. C. A., curator of the estate of W. R. during the lunacy of the latter, to compel W. C. A. to hand over the estate to him as executor. After preliminary proceed-

ings had been taken, E. R. (the appellant) moved to intervene, and have W. R.'s last will set aside, on the ground that it had been executed under pressure by D. J. M. W. R.'s wife, and whose favor the will was made, while the testator was of unsound mind. The appellant claimed and proved that D. J. M. was not the legal wife of W. R. she having another husband living at the time the second marriage was contracted. W. R. who was a master pilot died in 1881, having made a will two years previously. His estate was valued at about \$16,000. On the 4th of October, 1878, W. R. made a will by which he bequeathed \$4,000 and all his household furniture and effects to his wife J. M., \$2,000 to his niece E. R., \$4,000 to F. S. for charitable purposes, and the remainder of his estate to his brothers, nephews and nieces in equal shares. On the 8th of the same month he made another will before the same notary, leaving \$800 to his wife J. M., \$400 to each of his nieces M. and E. R., and \$400 to his brother, with reversion to the nieces if not claimed within a year, and the remainder to E. R. On the 27th November, 1878, W. R. made another, which is the subject of the present litigation, and by which he revoked his former wills and gave \$2,000 to F. S. to the poor of the parish of St. Roch., and the remainder of his property to his "beloved wife J. M." On the 10th January, following, W. R. was interdicted as a maniac, and a curator appointed to his estate. He remained in an asylum until December, 1870, then he was released, and lived until his death with his wife J. R., sister of the appellant. (1) *Held*, (reversing the judgments of the courts below) that the proper inference to be drawn from all the evidence as to the mental capacity of the testator to make the will of the 21st November, was that the testator at the date of the making of the will, was of unsound mind. *Russell & Lefrançois*, 8 S. C. Rep. 335, Su. Ct. 1883.

9. That, as it appeared that the only consideration of the testator's liberality to J. M. was that he supposed her to be "my beloved wife Julie Morin," whilst at that time J. M. was in fact the lawful wife of another man, the universal bequest to J. M. was void, through error and false cause. *Id.*

10. That it is the duty of an Appellate Court to review the conclusion arrived at by the courts, whose judgments are appealed from upon a question of fact, when such judgments do not turn upon the responsibility of any of the witnesses, but upon the proper conclusion to be drawn from all the evidence in the case. (2) *Id.*

[1] 2 Q. B. R. 245.

[1] Application for leave to appeal to Privy Council refused.

## II. ERROR IN NAME OF LEGATEE.

11. The defendants were sued under the will of the late Miss L., for £250 legacy bequeathed the plaintiff, whose christian names were Henry B., under the names George Henry. Plaintiff claimed that this must have been intended for him as the testatrix knew that George Henry had died some years previously and was in fact described as dead in another part of the will. This George Henry was father of plaintiff and testatrix knew them both by the names of Henry.—*Held* for plaintiff. *Lane & Taylor*, 4 L. N. 386, S. C. 1881.

## III. EVIDENCE CONCERNING.

12. All testamentary depositions must be reduced to writing, and no parole evidence will be received, not even of the witnesses to the deed, nor of the notary who drew it, to anything thereto or to make any changes therein, under pretence of obscurity or of omissions, nor to explain what is contained therein, nor what was agreed upon at the time it was made, but evidence may, nevertheless, be admitted of the condition of the testator or of his relationship to the legatees, or of the value of his succession with relation to the legacy, or of the custom of the County where he resided. *DeSalaberry & Faribault*, 11 R. L. 621, S. C. 1882.

## IV. EVIDENCE OF SANITY OF TESTATOR.

13. Action to set aside a will. Evidence as to sanity or otherwise considered, and will maintained. *Russell & Lefrançois*, 5 L. N. 81, Q. B. 1882.

## I. EXECUTION OF.

14. The legacy was made in the following terms: "*Je donne et lègue, en outre, à la dite Dame L. S., épouse du dit M. L., la somme de \$10,000, cours actuel, qui lui sera payée par mon légataire universel, ci-après nommé, dans le cours d'une année, à compter de mon décès, et sans intérêt jusqu'au moment de l'échéance comme suit: \$4,000 en parts de la Société de Construction Canadienne de Montréal, \$1,000 en parts de la Banque Jacques Cartier, \$4,000 en parts de la Banque du Peuple, \$500 en parts de la Banque d'Acadega, et \$500 en obligations solvables de celles qui se trouveront dans ma succession au moment de mon décès ou en argent, au choix de mon légataire universel.*" *Held*, that such legacy was validly discharged by the transfer to the legatee of the shares thereon indicated at their nominal value, and the universal legatee was not bound to pay to the particular legatee the difference between their nominal and real value, but that the universal legatee was bound to pay over to the particular legatee in bank shares or money, and if there were not sufficient bank shares in the succession for that purpose, to complete the



legacy in money. *DeSalaberry & Faribault*, 11 R. L. 621, S. C., 1882.

15. Where an estate was devised to A., in trust, with power to divide among A's children in such proportion as A. should appoint by his will, and in default of such appointment the estate to go to the children share and share alike. *Held*, that an appointment by will to certain of the children to the entire exclusion of one or more was a valid exercise of the power. *Abbott & McGibbon*, 7 L. N. 179, & 23 L. C. J. 120, Q. B. 1884., & 8 L. N. 267, P. C., 1885.

#### VI. FORM OF.

16. To an action for a legacy against the heirs of the late B. S. who made no disposition by her will, of the residue of her estate, it was pleaded *inter alia* that the original of the will was not entirely in the hand writing of the instrumenting notary, but that, on the contrary, the principal part of it was not in the hand writing of either of the notaries. *Held* that it was not necessary to be in the hand writing of the notary; that it was sufficient that it be read to the testator by one of the notaries in the presence of the other, signed by the testator in the presence of both notaries. *Royal Institution for the advancement of learning & Scott*, 26 L. C. J. 247, S. C., 1882.

#### VII. INTERPRETATION OF.

17. A legacy to a person and her children born and to be born of her marriage was valid even as regards children born of that marriage, that were neither born nor conceived at the time of the death of the testator. *Cupples & Martin*, 5 L. N. 423, S. C., 1881.

18. Respondants obtained judgment against the maker and endorser of certain promissory notes drawn by E. H. C. L., and endorsed by H. L. in his quality of executor to the last will and testament of his deceased wife H. M. mother of said E. H. C. L., the amount being for \$8963.83, besides interest and costs. On this, the bank sued out a writ of execution and under it seized certain properties to the estate of H. M. The children of H. M. made an opposition to this seizure claiming the property as theirs under their mother's will, which besides constituting them universal legatees, provided that the properties should be *inaccessible* and *insaisissable*, and not liable for any debts created by the said H. L. nor for any debts created by the testatrix herself under her own signature. They therefore concluded for the nullity of the seizure. On a contestation by the bank, the judgment dismissing the opposition was confirmed in appeal on the ground that the property was liable for the debts so created. *Lionais & Molson's Bank*, 26 L. C. J. 271, Q. B., 1882.

20. But *Held* in Supreme Court, overruling this judgment, that the endorsements were

not authorized by the will and that the clause in the will exempting the property of the testatrix from execution is valid and must be given effect to. *Ib.* 10 S. C. Rep. 526, Su. Ct., 1883.

21. A wife *commune en biens* constituted by will her husband her universal legatee charging him to return her real estate either by donation *entre vifs* or by will, to such of her children or grand-children as he might select, subject to such charges as he might impose. The husband, by his will, without referring to his wife's will, appointed three of his grand-children his universal legatees, and substituted to them some of his grand-children.—*Held*, that this was a valid exercise of the power conferred on him by the wife's will, great grand-children being included in grand-children, and the husband moreover having power to impose charges. *Roy & Piquet*, 6 L. N. 10, Q. B., 1882.

22. Where a property was bequeathed to a legatee on condition that he should pay to the executors a certain sum of money within five years after the death of the testator, and the legatee failed to pay the said sum; *held* that the legacy lapsed, notwithstanding that the legatee was absent at the time of the testator's death and for more than five years afterward. *Leslie & Leslie*, 7 L. N. 95 S. C. R., 1883.

23. A similar judgment to that already noted (1) arising out of the same will and rendered in the Superior Court (2) and confirmed in appeal (3) was finally reversed in Supreme Court. 1883 (4).

#### VIII. LIABILITY OF LEGATEE.

24. On the 30th April, 1869, H. S., being indebted to J. P., in the sum of £3,000 granted a hypothec on certain real estate which he owned in the city of Montreal. On 28th June, 1870, H. S. made his will in which the following clause is to be found: "That all my just debts, funeral and testamentary expenses be paid by my executors hereinafter named as soon as possible after my death." By another clause he left to W. H. in usufruct, and to his children in property, the said immoveables which had been hypothecated to secure the said debt of \$3,000. In 1879, H. S. died, and a suit was brought against the representative of his estate to recover this sum of \$3,000 and interest. *Held* (—Reversing the judgment of the Court of the Queen's Bench.) (5) That the direction by the testator to pay all his debts included the

[1] I. Dig. 747-84.

[2] 4 L. N. 86.

[3] 5 L. N. 384.

[4] Unreported.

(5) 5 L. N. 148.

debt of \$3,000 secured by the hypotheo. *Harrington & Corse*, 9 S. C. Rep. 412 & 28 L. C. J. 139. Su. Ct. 1883.

#### IX. PROHIBITION TO ALIENATE.

25. A clause of *insaisissable* in a will, does not exempt the legacy from seizure for alimentary provision for the legatee and his family. *Déland & Desrivieres*, 4 L. N. 40, S. C., 1881.

26. The plaintiff having obtained judgment against the defendant for a commercial debt seized *inter alia* two immoveables. The defendant opposed, setting up that the property was inalienable by the will of their father, who died in 1857. The clause of the will relied on was as follows: "*Je ne donne par mon présent testament que la jouissance et les revenus de mes dites propriétés et règle que mes dits enfants ne pourront aucunement vendre ni engager en aucune manière mes dites propriétés, à peine d'être, ceux de mes dits enfants qui voudraient contrevenir à cette condition, privés de tout bénéfice dans ma succession.*" Plaintiff contested the opposition on the ground that as the prohibition to alienate did not contain a substitution, it could not avail, and, moreover, on the ground that the testator had only disposed of the usufruct of the property. The plaintiff relied on *Renaud & Guillet dit Tourangeau* (1).—*Held*, distinguishing the case from *Renaud & Tourangeau*, that under the law before the Code, a prohibition to alienate imposed under penalty of a forfeiture of the property given, cannot be deemed a *nudum prescriptum*, and effect must be given to it according to the will of the testator. *Bourget & Blanchard*, 7 Q. L. R. 322, S. S. 1881.

#### X. PROOF OF.

Whereas a considerable number of wills have been received without the required mention, respecting the reading and signature required by article 843 of the Civil Code, to the great loss of the parties interested. Therefore Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows:

Every authentic will, received before two notaries, or one notary and two witnesses, without there being mentioned in the deed that the testator signed, in the presence of the notaries, or of the notary and the witnesses, and with them, or has in the presence of the notaries or the notary and the witnesses, declared that he was unable to sign after the deed had been read over to him by one of the notaries, in the presence of the other, or of the notary in presence of the witnesses, up to the time of coming into force of this act, shall be considered authentic and valid, notwithstanding this want of mention in the same manner as if mention thereof had been made in the deed, provided, however, that the formalities, which should have been mentioned, as having been complied with, have been carried out. Q. 47 Vict., cap. 83, sect. 1.

The provisions of this act shall not affect pending cases. Sec. 2. This act shall come into force on the day of its sanction. Sec. 3.

[1] I. Dgi. 1833-109.

#### XI. REGISTRATION OF.

27. A universal legatee under a will is seized of the property though the will be not registered. *Ethier & Paquette*, 12 R. L. 184, S. C. 1882.

#### XII. REPRESENTATION.

28. *Per curiam*.—The question in this case is as to the will of M. G., defendant's wife, deceased. In 1866, she left to her nephew, Z. G., and at his death, without children, to his brothers alive at his death. The *légataire* Z. died a few days before the testatrix. The expression of the testatrix is "*j'institue Z. G., mon neveu, mon légataire universel.*" She goes on to prohibit his willing or disposing of the legacy except to descendants; and if he die without children, the said property to "*retourner à ses frères alors vivant, seulement.*" On the death of M. G., the plaintiff claimed as if *caducité* was to be held on the legacy to Z., and that the caducity of the institution of Z. drew with it the *caducité* of the substitution attached to the institution. The plaintiff sued defendant *en pétition d'hérédité*, claiming that he (plaintiff) in right of his mother, half-sister of M. G., was entitled to an account of her *hérédité* from defendant, and to give plaintiff his share; as if the will of M. G. was *caduc*. The intervenants claiming to be the only two brothers of Z., who is dead and left no children, say that M's will has not become *caduc*, that it operates in their favor, that they have sold their rights as legatees to the defendant, with warranty, so they have interest (they say) to defend defendant, and to intervene for the purpose. In April, 1881, the Court of Iberville maintained the intervention and dismissed the principal action. Its first *considérant* is that it appears by the will of M. G. that she intended that the *intervenans* should take, if Z., her first-named *légataire universel*, died without children. Then it finds that Z. having died without children, though before the death of the testatrix, the *intervenans* are *légataires substitués, ou légataires subordonnés par le fait du décès de Z.* The *intervenans* claim that the will of M. may be held as if it read to Z., or to his brothers if he died leaving no children. The judgment of the Court below finds support by the law books. *Touillier*, tom. 5, No. 794 may be cited; and though the law of England is for nothing in this case, it agrees with that supported by *Touillier*. (See *Jarman on Wills*, ch. 50, vol. 2). Judgment confirmed. *Tetu v. Menard*, S. C. R., 1882.

#### XIII. REVOCATION OF.

29. Action by the plaintiff as a special legatee under the will of the late A. F. against the defendant, a curator to the estate of the testator, and praying for an account. The testator's property at the time of his death consisted of three seigniories, *Rivière du Loup*, *Madawaska* and *Temiscouata*. He

had eight children, the first two by an Indian woman (whom the defendants pretended were illegitimate) and the other six by a white woman whom he had never married. The bulk of the property, by the will, was bequeathed to the sons of whom there were four, and special legatees to the daughters. Subsequently to the making of the will, the testator received an offer of £15,000, for the woodland seigniories, which he had supposed to be worth only some £1500 or £2000, and being in debt to a large amount and much in need of money he sold. With the money he paid off a considerable portion of his indebtedness and the balance he invested in mortgages on real estate at interest for the benefit of his children. On behalf of the defendants it was contended that this sale had the effect of revoking the will. *Held*, that under the old law previous to the Code (1) the sale under the circumstances in which it was made had not the effect of defeating the legacy of the seigniories to the plaintiff and his legatees, and that they had a right to claim the £9600 mentioned in the declaration as the proceeds of the sale, and as representing the said seigniories. *Fraser & Pouliot*, 7 Q. L. R. 148, S. C. 1881.

## WITNESSES—See EVIDENCE, PROCEDURE, ENQUÊTE.

### I. RULE FOR CONTEMPT AGAINST.

30. On a rule for contempt against witnesses it was said that the form asking that they "be imprisoned until they have given evidence" was wrong as they would, in that case, have to give evidence in gaol for which there was no provision, or stay there for ever. *Fair & Cassils*, 4 L. N. 102, S. C. R. 1881.

## WOMEN.

### I. POWERS OF, *see* MARRIAGE.

### II. PROTECTION OF, *see* CRIMINAL LAW, OFFENCES AGAINST THE PERSON.

(1) Every alienation by the testator of the right of ownership in the thing bequeathed, even in a case of necessity or by forced means, or with right of redemption reserved or by exchange, carries with it, unless he has otherwise provided, a revocation of the will or legacy for all that has been thus disposed of, even though if it were voluntary the alienation be void. 879 C. C.

## WOOD.

### I. OWNERSHIP AFTER CUTTING, *see* OWNER-SHIP.

## WOODS AND FORESTS.

### I. PLANTING OF TREES, *see* Q. 45 VIC. CAP. 13.

### II. PROTECTION OF.

Section 2 of the Art. 34 Vict., cap. 17, is repealed and replaced by the following:

2. No person shall in the forest or at a distance of less than one mile from a forest set fire to, or cause to burn, any pile of wood, brushwood or brushwood or any tree, shrub or other plant, at any period during the year. It, however shall be permitted for the purpose of clearing lands at any time, between the first of July and the first of September, in each year.

2. This Act shall come into force on the day of its sanction. Q. 45 Vict. cap. 19, and Q. 46 Vict. cap. 10.

## WORK AND LABOR.

### I. ACTION FOR, *see* ACTION.

### II. HIRE OF *see* HIRE, LESSOR & LESSEE

## WORKMEN.

### I. WAGES OF EXEMPT FROM SEIZURE TO ONE HALF, *see* EXECUTION, EXEMPTION.

### II. LIABILITY OF, *see* MASTER & SERVANT.

## WRITS.

### I. AMENDMENT OF, *see* PROCEDURE.

### II. ISSUE OF IN URGENT CASES.

### III. OF POSSESSION, *see* POSSESSION.

### IV. OF PROTECTION.

### II. ISSUE OF IN URGENT CASES.

The following article is added to the said Code, after article 467.

"467a. In cases of capias, attachment before judgment, attachment for rent, conservatory attachment, and in all cases of urgency, the suit may be issued outside office hours, and without having judicial stamps be deposited with office issuing the suit, who is bound to affix the judicial stamps upon the fiat as soon as possible." Q. 48 Vic. cap. 20, sec. 7.

### IV. OF PROTECTION.

30. A writ of protection will not be granted to protect the defendant in a civil proceeding. (1) *Hus & Charland*, 12 R. L. 608, S. C. 1884.

[1] In appeal.



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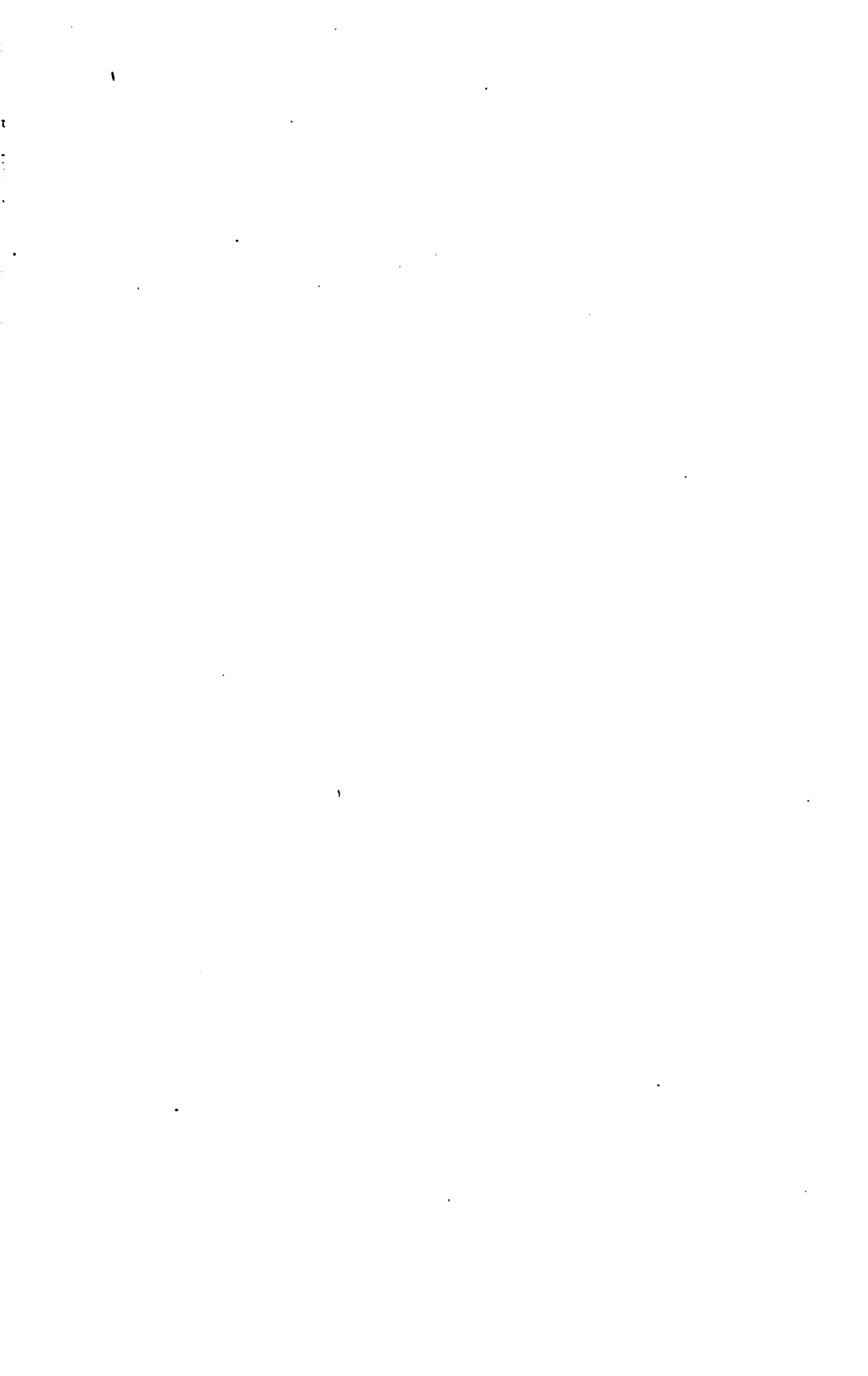
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